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In The Supreme Court of the United States

SPARTON TECHNOLOGY, INCORPORATED,

Petitioner,

v.

UTIL-LINK, LLC; NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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QUESTION PRESENTED FOR REVIEW

Whether the Sixth Circuit deprived Petitioner of its Seventh Amendment right to a jury trial by failing to attempt to reconcile an alleged inconsistency in a civil jury verdict in favor of Petitioner, as the well-established precedent of this Court requires, and by choosing to enter judgment based upon a portion of the jury's verdict that favored the defendants while disregarding the portion of the jury's verdict in favor of Petitioner, all despite the defendants' failure to timely object to the jury's verdict and the underlying jury instructions under Rules 49(b) and 51(c) of the Federal Rules of Civil Procedure.

PARTIES TO THE PROCEEDING

Petitioner Sparton Technology, Inc. was plaintiff-appellee below. Respondents Util-LINK, LLC, and the National Rural Telecommunications Cooperative were defendants-appellants below.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner states that the parent company of Petitioner Sparton Technology, Inc., is Sparton Corp., a publicly traded corporation.

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JURISDICTION

The judgment of the court of appeals was entered on September 21, 2007. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSISTUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Seventh Amendment of the Constitution provides: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

Fed. R. Civ. P. 49(b) provides:

> (b) General Verdict Accompanied by Answer to Interrogatories. The Court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or

more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

Fed. R. Civ. P. 51(c) provides:

(c) Objections.

> (1) A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds of the objection.
>
> (2) An objection is timely if:
>
> > (A) a party that has been informed of an instruction or action on a request before the jury is instructed and before final jury arguments, as provided by Rule 51(b)(1), objects at the opportunity for objection required by Rule 51(b)(2); or
> >
> > (B) a party that has not been informed of an instruction or action on a request before the time for objection provided under Rule 51(b)(2) objects promptly after learning that the instruction or request will be, or has been, given or refused.

Fed. R. Civ. P. 51(d) provides:

> (d) Assigning Error; Plain Error.

> (1) A party may assign as error:
>
> > (A) an error in an instruction actually given if that party made a proper objection under Rule 51(c), or
> >
> > (B) a failure to give an instruction if that party made a proper request under Rule 51(a), and – unless the court made a definitive ruling on the record rejecting the request – also made a proper objection under Rule 51(c).
>
> (2) A court may consider a plain error in the instructions affecting substantial rights that has not been preserved as required by Rule 51(d)(1)(A) or (B).

STATEMENT OF THE CASE

This diversity matter involves what should have been a straightforward commercial lawsuit between corporate parties that resulted in a jury verdict in favor of the plaintiff, Petitioner Sparton Technology, Inc., ("Sparton"). Unfortunately, a panel of the Sixth Circuit has turned the matter into

one of Constitutional magnitude, by depriving Sparton of its *Seventh Amendment* right to a jury trial.

The Sixth Circuit accomplished this dubious feat in the context of a claim by the defendant that there was an inconsistency in the jury's answers to certain written interrogatories and in its general verdict. While Sparton argued the defendant waived the inconsistency issue under Fed. R. Civ. P. 49(b) by virtue of its failure to raise the issue prior to the discharge of the jury, the Sixth Circuit dodged the issue by determining, effectively on its own impetus, that the problem was not related to the jury's verdict, but was related to what it claimed were erroneous jury instructions. The Sixth Circuit made no attempt to resolve the purported inconsistency in the verdict, as the well-established precedent of this Court requires. The Sixth Circuit also did not utilize the customary remedy for an erroneous jury instruction of remanding the matter for a new trial. Instead, in a substantial departure from normal procedure, the Sixth Circuit ordered that the district court enter judgment in favor of the defendant based on one portion of the jury's verdict while ignoring the jury's findings in favor of Sparton.

The Sixth Circuit's attempt to divorce the jury instruction issue from the issue of the alleged inconsistency in the jury's verdict, and its resulting failure to attempt to reconcile the supposed inconsistency while at the same time attempting to pick and choose among the various findings of the jury, deprived Sparton of its *Seventh Amendment* right to a jury trial. Therefore, this Court must

intervene to protect Sparton's fundamental constitutional rights. In addition, this case gives this Court an opportunity to provide some much needed clarity to an issue it has not previously addressed – that being whether, when, and under what circumstances, a party waives its right to complain about an inconsistent verdict under Rule 49(b). The holdings of the various Circuits on this issue is somewhat convoluted and inconsistent, and a singular, uniform statement of how the issue should be approached would be of great value to practitioners and litigants involved in federal court jury trials.

1. Util-LINK, LLC, ("Util-LINK"), is a Delaware limited liability company whose members include the National Rural Telecommunications Cooperative, ("NRTC"). C.A. App. 921-925. NRTC is a District of Columbia non-profit cooperative membership corporation, that provides telecommunications products to its member-owners. *Id.* at 921-925, 965. Util-LINK was formed in October 1995 to develop a product known as the "LINK," which would automatically read electric meters, and which was to be marketed and sold principally by NRTC to its members. C.A. App. 924-930, 967-968.

Sparton Technology, Inc., ("Sparton"), is a New Mexico corporation engaged in contract manufacturing of electronics products. C.A. App. 749. On May 1, 1997, Util-LINK entered into a Manufacturing Agreement with Sparton, whereby Sparton agreed to manufacture 75,000 LINK units for Util-LINK. *Id.* at 428, 752.

2. In order to insure uninterrupted production of LINK units, Sparton was required to order raw materials in advance of scheduled production, something referred to as the materials "lead time." C.A. App. 799, 898-909. In order to deal with the materials lead time issue, Sparton placed raw materials orders based on projections or "forecasts" from Util-LINK as to their expected future production requirements, something that is standard practice in electronics contract manufacturing. *Id.* at 906-907.

In the fall of 2000, it was anticipated that manufacture of the original 75,000 LINK units would be completed in the early part of 2001. C.A. App. 757-758. This being the case, Sparton and Util-LINK began discussing Util-LINK's anticipated production requirements for LINK units after the completion of the original 75,000. *Id.* at 468, 794-795.

On October 3, 2000, Util-LINK's President, Steven Collier, informed Sparton that Util-LINK's forecast for LINK sales for 2001 was 4,200 units per month. *Id.* at 468, 794-795, 961. A few days later, on October 13, 2000, Mr. Collier sent an email message to Sparton's General Manager, Dick Mico, and its Assistant General Manager, Charles Stranko, stating:

> NRTC is still projecting that they will sell 3,600 LINKs per month next year (for a total of 43,000). However, I think it is possible, even probable that they may sell as many as 6,500 per month.

> We should maintain the capability and flexibility to accommodate this range of production.
>
> * * *
>
> I would be interested in regularly receiving the LINK component inventory tables that you all provided to us when you visited last week. I am also interested in what you may be doing to improve the accuracy and reliability of the information in order to prevent future interruptions in production due to lack of parts.

Id. at 438, 795-796, 961. According to Mr. Stranko, Util-LINK's CEO, Larry Bailey, also personally asked Sparton to place advance orders for raw materials to support LINK production in 2001 beyond the original 75,000 units, and Mr. Bailey was thereafter directly involved in the process of ordering and acquiring those advance materials. *Id.* at 850-851. Mr. Stranko testified that, based on Mr. Bailey's request and the October 13, 2000 forecast, Sparton began purchasing raw materials to support the forecasted production requirements beyond the original 75,000 units, and informed Util-LINK that it was doing so. *Id.* at 442, 797, 849-865.

During a meeting on January 11, 2001, Mr. Stranko[1] indicated to Mr. Collier that Sparton had

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[1] Mr. Mico retired as Sparton's general manager at the beginning of 2001, and was succeeded in the position by Mr. Stranko. C.A. App. 854.

placed orders for approximately two million dollars in raw materials inventory to support Util-LINK's forecasted LINK production for 2001. C.A. App. 467, 799-800. Mr. Stranko testified that during the course of this meeting, Mr. Collier indicated that he wanted the materials to continue on their way to Sparton.[2] *Id.* at 888. On January 15, 2001, Mr. Bailey followed up on the discussion between Mr. Stranko and Mr. Collier by indicating to Sparton that, "[a]t present, the unofficial forecast that NRTC has been working from would require about 6,250 LINKs per month on the average for 2001...." *Id.* at 444, 800.

In early 2001, Sparton indicated to Util-LINK that it needed formal confirmation of Util-LINK's intention to continue with LINK production according to its previous forecasts and, according to Mr. Stranko, Util-LINK responded by telling Sparton not to cancel the advance materials orders because Util-LINK wanted the materials. C.A. App. 848. Consistent with this, Mr. Collier indicated in an email message to Mr. Stranko on February 2, 2001:

> I am getting pretty persistent pressure from John [Hoover of Sparton] to provide an additional purchase order for LINKs. He has indicated that Sparton will cancel its orders for advance materials if he does not get a new purchase order right away (today).

---

[2] Mr. Collier, on the other hand, denied that Util-LINK had knowledge of Sparton's materials orders and denied asking not to cancel the orders and the like.

> We have requested from NRTC another purchase order for 35,000 LINKs. This new purchase order, along with the one already in hand for 25,000 LINKs (9,000 already produced in January) will make up the total sales of 64,000 that they are projecting for 2001. We would expect Sparton to run one shift on the production line making about 5,000 LINKs per month, prepared to ramp up to two shifts on short notice when, as we are confident will be the case, sales exceed projections.
>
> As soon as we have a new purchase order from NRTC, we will issue a new one to Sparton. Until then, we have to rely on their official sales projections that they gave us this week of 64,000 LINKs for 2001....

Id. at 445, 800-801. According to Mr. Stranko, as of this time, Sparton had communicated to Util-LINK the amount of advance materials it had on order to support this additional LINK production. *Id.* at 800-801, 817.

Mr. Collier further indicated to Mr. Stranko on February 28, 2001, that "we have just completed a large, steady production effort and have settled into a stable, 5,000 per month production level that we intend to continue for the foreseeable future." C.A. App. 446, 802. On March 5, 2001, Mr. Stranko sent a memorandum to Mr. Collier indicating, among other things, that:

> Considerable materials have been placed on order based on verbal commitments. Without written contractual commitment such as a PO from Util-LINK these orders must be canceled....

C.A. App. 448, 808-809. (PX 20; Stranko at TR. Vol. 6, 4-6). On March 7, 2001, Util-LINK responded with an email from Mr. Bailey, stating:

> I have summarized our conversation of yesterday in a lengthy conversation with Steve Collier this morning and wanted to give you something in writing early today so that you can act immediately on the most critical issues.
>
> There will be a P.O. released to Sparton to build 15,000 units beyond the original 75,000 unit order. I am hoping we can get this released today....

Id. at 450, 811.

On March 12, 2001, Sparton representatives again communicated to Mr. Collier the need to issue a purchase order to cover the materials exposure that Sparton had undertaken based on Util-LINK's forecasts. C.A. App. 472, 811-812. On March 22, 2001, Util-LINK issued a purchase order to Sparton for 15,000 LINK units, though at a different price than had been proposed by Sparton. *Id.* at 451. The next day, Sparton began scheduling the delivery of the advance raw materials to support the production

of the units covered by the purchase order. *Id.* at 888. During the course of this activity, Sparton and Util-LINK discussed ways to arrive at a mutually agreeable price for the additional units, including the concept that the price per unit could be reduced if the quantity of units on order was increased above 15,000. *Id.* at 452, 454, 474, 811-814, 1133-1137. Sparton then indicated to Util-LINK on May 1, 2001, that it would be willing to produce 35,000 additional LINK units at a $109.00 per unit price. *Id.* at 455, 814. Util-LINK indicated its agreement with this proposal through a pair of emails from Mr. Collier also issued on May 1, 2001. *Id.* at 458, 460, 814-815. Mr. Collier specifically indicated, among other things, that:

> ...Util-LINK can accept the following:
>
> Util-LINK will pay Sparton $109/LINK 340-HL delivered under the current purchase order of 15,000 units...
>
> NRTC has communicated to Util-LINK via its official sales projections that it intends to sell a total of 65,000 LINK 340-HL units in 2001 and therefore intends to purchase from Util-LINK...15,000 to 20,000 additional LINK 340-HL units through one or more additional purchase orders. Therefore, Util-LINK commits to order such additional LINK 340-HL units from Sparton through one or more

> additional purchase orders within the next 90 to 150 days.

Id. On May 2, 2001, Sparton confirmed the price and quantity terms via email. *Id.* at 461, 815-816, 1141.

As of mid-June 2001, Sparton still had not received a purchase order to cover all 35,000 additional LINK units. As a result, on June 19, 2001, Sparton's customer business manager for the LINK program, Janna Mitchke, sent a letter to Mr. Collier stating:

> ...As of today, we currently hold approximately $1.8 million of Util-LINK inventory. These materials are intended for the next order of 35,000 Links as we have discussed in the past, the pricing of $109.00 is based on the utilization of these materials.
>
> Sparton has assumed this liability in good faith...[h]owever, our Board of Directors and auditors will look differently at this inventory and may require that we consider a liquidation process on the materials if there is no order in the system.
>
> In order to help calm the fears of the Board of Directors and show the true intent of our manufacturing

> partnership, we are asking that Util-LINK issue a purchase order for 35,000....

C.A. App. 462, 817-818, 1144. Mr. Stranko confirmed in his trial testimony that Sparton had, in fact, procured this raw materials inventory based upon Util-LINK's forecasts and Util-LINK's expressed desire to maintain production and meet its forecasts. *Id.* at 817.

In response to Ms. Mitchke's correspondence, on June 30, 2001, Util-LINK issued a purchase order to Sparton for 35,000 LINK units, at $109.00 per unit, to be produced in lot quantities of 5,000. C.A. App. 463, 818-819. The purchase order indicated, however, that, "Util-LINK will incur no penalty or liability for any units or raw material inventory beyond the firm release," but that "Util-LINK will be obligated for units under the current firm release." *Id.* Sparton personnel understood the "current firm release" language to refer to the purchase order for 15,000 units previously issued by Util-LINK on March 22, 2001. *Id.* at 887, 1138-1139.

In mid-2001, Util-LINK determined that it would not be able to continue in business without receiving additional capital contributions. C.A. App. 956-959, 982. NRTC, however, decided that it did not wish to make further capital contributions and, as a result, in August 2001 it was determined that Util-LINK would be dissolved and its LINK business merged directly into NRTC. *Id.* at 923, 971, 987. Several months later, on approximately January 24, 2002, NRTC informed Sparton that it was not going

to continue with any further production of the LINK. *Id.* at 464, 1147-1148. Sparton thereafter sought payment from NRTC for the obsolete and advance, (also referred to as "excess"), raw materials that Sparton was left holding in its inventory, but payment was not forthcoming. *Id.* at 819-820, 1148-1151.

3. In September 2002 Sparton filed suit against NRTC and Util-LINK in the United States District Court for the Eastern District of Michigan, based on diversity of citizenship, alleging, (in an amended Complaint), counts of: 1) breach of the 1997 Manufacturing Agreement relating to certain "obsolete" materials and test equipment; 2) breach of a 2001 "retrofit agreement" between the parties; 3) breach of a contract to purchase 35,000 additional LINK units; 4) promissory estoppel regarding the additional 35,000 LINK units; and 5) equitable estoppel regarding the additional 35,000 LINK units. Sparton's promissory and equitable estoppel claims were pled as alternatives to the breach of contract claim relating to the additional 35,000 LINK units. In response, NRTC and Util-LINK[3] filed a counter-claim alleging that Sparton committed a breach of warranty by manufacturing defective products.

Prior to trial, NRTC filed a Rule 56 motion for summary judgment seeking, among other things, the dismissal of Sparton's breach of contract claim as to the 35,000 additional LINK units, on the basis that

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[3] The parties eventually agreed that, for purposes of the litigation, Util-LINK and NRTC would be treated as one and the same.

there was insufficient evidence to establish that the parties had entered into a binding contract. NRTC also sought the dismissal of Sparton's promissory and equitable estoppel claims on the basis that there was insufficient evidence to support those claims as a matter of law.[4] NRTC also served Sparton with a motion for Rule 11 sanctions with respect to the estoppel claims. In response, Sparton offered to voluntarily withdraw its estoppel claims. NRTC's counsel notified the district court of Sparton's offer to withdraw the estoppel claims on June 30, 2004, at the hearing on the motion for summary judgment. C.A. App. 746. The parties, however, were unable to agree on the terms of a stipulated order of dismissal, and no stipulation was ever submitted to the district court to voluntarily dismiss the estoppel claims. As a result, the district court considered the estoppel claims in its disposition of NRTC's motion for summary judgment. The district court granted NRTC's motion with respect to Sparton's estoppel claims and as to Sparton's claim for breach of the parties' "retrofit agreement," but denied the motion as to Sparton's remaining claims. C.A. App. 274-296.

4. The matter proceeded to a jury trial in September 2005 on Sparton's claims for breach of the parties' 1997 Manufacturing Agreement relating to payment for the obsolete materials and test

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[4] Sparton also filed a Rule 56 motion seeking summary judgment as to NRTC's counterclaim and seeking partial summary judgment on its own claim as to the existence and breach of a binding contract for the purchase of 35,000 additional LINK units. Sparton's motion was denied by the district court.

equipment, and breach of a contract to purchase 35,000 additional LINK units. NRTC's counter-claim for breach of warranty also went to trial.

On the fourth day of trial, during the course of Sparton's presentation of its case-in-chief, the district court indicated to the parties that, based upon the evidence presented at trial to that point, the district court was "embarrassed" by its prior decision to grant NRTC summary judgment with respect to Sparton's estoppel claims. C.A. App. 788-789. The district court indicated that, if Sparton wished to file a motion seeking the reinstatement of its promissory and equitable estoppel claims, the court would consider such a motion. *Id.* Accepting the district court's invitation, Sparton filed a Motion for Relief from Order pursuant to Fed. R. Civ. P. 60(b)(6), seeking reinstatement of its estoppel claims, and NRTC filed a response. *Id.* at 512-533. The district court granted the motion, reinstating Sparton's estoppel claims. *Id.* at 534-535. NRTC objected to the reinstatement of Sparton's estoppel claims, but did not seek additional time to prepare to defend the claims, did not ask to recall the lone live witness whose testimony had already been concluded, and otherwise proceeded to litigate the estoppel claims throughout the remainder of the trial.

At the conclusion of the presentation of the evidence, following a charging conference, the district court provided the parties with a copy of the instructions it intended to give to the jury, along with a copy of the verdict form it intended to utilize. C.A. App. 1032-1036. The jury instructions stated in

pertinent part with regard to Sparton's breach of contract and estoppel claims related to the 35,000 additional LINK units and liability for Sparton's advance materials orders, that:

> If you award damages to Sparton for breach of contract by NRTC, then you need not consider the estoppel claims. If, however, you do not award damages to Sparton for breach of contract, then you must consider the estoppel claims.
>
> Sparton asserts in addition to its claim for a contract of 35,000 additional link units that it was induced by NRTC's promises to acquire the excess raw materials that were available for the production of 35,000 additional units. To prevail on this claim, Sparton must prove by a preponderance of the evidence, first, NRTC made promises which it had reasonably expected to induce action by Sparton to acquire additional raw materials or withhold from taking action to cancel orders for raw materials and, second, which in fact did in fact [sic] induce Sparton to acquire such raw materials or to withhold taking action to cancel orders for raw materials. If you find a promise was made but that Sparton's reliance was unreasonable or unjustified, then you must answer no to question C1.

> Sparton asserts as another alternative estoppel claim that it reasonably relied upon the facts which NRTC misrepresented or concealed or were otherwise calculated to convey the impression that the facts were other than those which actually existed. In order to find such reliance, you must find by a preponderance of the evidence that the factual information was reasonably expected by NRTC to be acted on by Sparton in acquiring raw materials for the production of additional units beyond the initial 75,000 or failing to take action to cancel orders for such raw materials and that Sparton in fact did so to its detriment.
>
> Please note that if you answer for Sparton on the first estoppel question, you do not consider the second. If you answer yes to either question 1 or 2 of the estoppel claims, then you are required to determine the amount of loss or damage, if any which Sparton suffered as a proximate result of Sparton's reliance....

Id. at 1057-1059. The verdict form, (Pet. App. 55a), in turn, stated in pertinent part:

> **B. The Additional 35,000 Units**
>
> 1. Did Sparton and NRTC have a contract under which Util-LINK

(NRTC) was obligated to purchase 35,000 additional LINKS?

Yes _____

No _____

[If you answered "Yes" to Question B 1, please proceed to Question B 2; if you answered "No" to Question B 1, please proceed to Part C]

2. Did NRTC breach the agreement by failing to purchase the 35,000 LINKS?

Yes _____

No _____

[If you answered "Yes" to Question B 2, please proceed to Question B 3; if you answered "No" to Question B 2, please proceed to Part C]

3. What are Sparton's damages, if any, caused by the breach?

$ _____

[Please proceed to Part C].

C. The Estoppel Claims

1. Did Sparton justifiably rely upon a promise by NRTC which NRTC should have reasonably expected would induce action by Sparton with respect to excess raw materials?

Yes _____

No _____

[If you answered "Yes" to Question C 1, please proceed to Question C 3; if you answered "No" to Question C 1, please proceed to Question C 2]

2. Did Sparton change its position to its detriment which [sic] respect to excess raw materials in reasonable reliance upon statements of NRTC with respect to its future requirements?

Yes _____

No _____

[If you answered "Yes" to Question C 2 please proceed to Question C 3; if you answered "No" to Question C 2, you have completed your

deliberations on Sparton's Claims.]

3. What is the amount of loss, if any, suffered by Sparton as a proximate result of such reliance?

$ _____

The parties were provided with an opportunity to object on the record to the jury instructions and to the verdict form. C.A. App. 1032-1036. NRTC objected generally to the inclusion of references to Sparton's promissory and equitable estoppel claims in the jury instructions and on the verdict form, based on its stated belief that those claims should not go to the jury. *Id.*, at 1035. NRTC, however, made no specific objection to the language of the instructions relating to the jury's ability to consider the estoppel claims after its consideration of Sparton's contract claim relating to the 35,000 additional LINK units. *Id.* at 1034-1036. Likewise, NRTC did not articulate any specific objection to the language contained in the verdict form relating to the jury's consideration of Sparton's estoppel claims after its consideration of Sparton's contract claim. *Id.*

The jury returned a verdict finding that NRTC was responsible to Sparton for $494,644.23 in damages for "obsolete" raw materials under the parties' 1997 Manufacturing Agreement. Pet. App. 55a. The jury then indicated that it believed that the parties had entered into a contract for the purchase of 35,000 additional LINK units by

answering "Yes" to Question B 1, but found that NRTC had not breached this contract, answering "No" to Question B 2. *Id.* Having made these findings, consistent with the language contained in the jury instructions and on the verdict form, the jury went on to consider Sparton's estoppel claims, finding that NRTC was responsible to Sparton on a promissory estoppel theory for $3,087,043.09 in damages for the advance or "excess" raw materials ordered for the production of additional LINK units. *Id.* The jury also returned a verdict in favor of Sparton on NRTC's counter-claim. *Id.* Though the jury was polled as to its verdict at the request of NRTC's counsel, no objections were raised to the jury's verdict, and the jury was discharged. A Judgment was entered based on the jury verdict on November 9, 2005. Pet. App. 53a.

5. On November 23, 2005, NRTC filed a post-trial motion for judgment as a matter of law or for a new trial. C.A. App. 631-652. NRTC's post-trial motion included arguments that: NRTC was unfairly prejudiced by the reinstatement of the promissory and equitable estoppel claims during the course of the trial; the jury's verdict on Sparton's advance materials claim was "inconsistent" because the jury found the existence of a contract for the purchase of 35,000 additional LINK units but no breach of the contract by NRTC, thereby, (according to NRTC), precluding recovery by Sparton on an estoppel theory; and there was insufficient evidence to support recovery by Sparton on an estoppel theory. Sparton responded by arguing that: NRTC was not prejudiced by the reinstatement of the estoppel claims because the reinstatement occurred during

the initial portion of Sparton's presentation of its case-in-chief, which afforded NRTC ample opportunity to address the claims during the presentation of its defense; NRTC waived the right to complain of any inconsistency in the jury's verdict by virtue of its failure to object to the purported inconsistency prior to the discharge of the jury; the jury's verdict was not inconsistent; and there was sufficient evidence to support recovery for Sparton's excess materials claim on the basis of estoppel. C.A. App. 671-692.

On March 27, 2006, the district court denied NRTC's post-trial motion as to liability issues. Pet. App. 24a. The district court determined that: NRTC's claim that it had been unfairly prejudiced by the reinstatement of the estoppel claims during trial lacked merit; it was unnecessary to determine whether NRTC waived its right to complain of any inconsistency in the jury's verdict, because the district court resolved any potential inconsistency by ruling that there was insufficient evidence to support the jury's finding of the existence of an enforceable contract for the purchase of 35,000 additional LINK units; and there was sufficient evidence to support recovery for Sparton's advance materials purchases on a promissory estoppel theory. *Id.* The district court, however, ordered a new trial as to Sparton's damages unless Sparton agreed to a remittitur of its "obsolete" materials damages to $171,360.00, and a remittitur of its advance materials damages to $1,747,415.94. *Id.* Sparton accepted the remittitur and an Amended Judgment accordingly entered on April 5, 2006. Pet. App. 22a.

6. On May 1, 2006, NRTC filed a Notice of Appeal in the United States Court of Appeals for the Sixth Circuit. NRTC thereafter identified the issues presented on appeal with respect to Sparton's advance materials claims as:

> 1. Do uncontested jury findings that a contract existed and was not breached preclude judgment on the alternative promissory estoppel claims?
>
> 2. Is the promissory estoppel award unsupported as a matter of law because it is premised only upon sales forecasts and inventory expenses incurred during contract negotiations?
>
> 3. Did Sparton's failure to prove an ability to fully liquidate excess raw materials at the time of reliance upon any actionable representation of Defendants bar an award of reliance damages?

C.A. Appellants' Br. 2. As such, NRTC did not seek appellate review of the district court's action in reinstating Sparton's estoppel claims, nor did it challenge the portion of the jury verdict awarding Sparton damages for "obsolete" materials.[5]

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[5] The portion of the Amended Judgment relating to "obsolete" materials was subsequently paid and satisfied by NRTC.

On September 21, 2007, the Sixth Circuit issued an unpublished Opinion whereby it reversed the award of advance materials damages in favor of Sparton and remanded the case for entry of a Judgment in favor of NRTC on Sparton's estoppel claims. Pet. App. 1a. The Sixth Circuit opined that under Tennessee law a finding of the existence of a contract between the parties would preclude recovery on the basis of promissory estoppel.[6] The Sixth Circuit did not, however, base its reversal on NRTC's assertion of an inconsistency in the jury's verdict, but instead stated that the district court erred in issuing instructions and a verdict form that allowed the jury to consider Sparton's estoppel claims once it determined that there was a contract between the parties for the purchase of 35,000 additional LINK units. Surprisingly, though, rather than remanding the matter for a new trial on the basis of the purportedly defective jury instructions, the Sixth Circuit simply held that it was appropriate to accept the portion of the verdict form wherein the jury indicated that it believed there was a contract between the parties but no breach by NRTC, and to ignore the portion of the verdict form that provided for recovery on the basis of promissory estoppel.[7]

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[6] The parties stipulated in the district court that Tennessee law applied to Sparton's claims.

[7] The Sixth Circuit also affirmed the jury's verdict in favor of Sparton on NRTC's counter-claim.

REASONS FOR GRANTING THE PETITION

I. THE SIXTH CIRCUIT FAILED TO APPLY THE STANDARDS ESTABLISHED BY THIS COURT FOR THE RESOLUTION OF ALLEGED INCONSISTENCIES IN A JURY VERDICT UNDER FED. R. CIV. P. 49(b), THEREBY IMPROPERLY DENYING SPARTON ITS SEVENTH AMENDMENT RIGHT TO A JURY TRIAL.

At the center of the controversy in this matter is the verdict form that was provided to the jury. In civil cases, rather than providing a general verdict form that requires the jury to simply indicate whether or not if finds in favor of the plaintiff on each claim submitted for determination, Rule 49 of the Federal Rules of Civil Procedure permits a trial court to submit an alternative type of verdict form to the jury. Rule 49(a) permits the use of a "special verdict" form that submits a series of specific questions to be answered by the jury, without a determination of liability as to any claims. The trial court then applies the law to the jury's answers to the factual questions, in order to make a liability determination. *See Mason v. Ford Motor Co., Inc.*, 307 F.3d 1271, 1274-1275 (11th Cir. 2002)(explaining the differences between a "special verdict" under Rule 49(a) and a general verdict with "written interrogatories" under Rule 49(b)). Rule 49(b), on the other hand, permits the trial court to submit "written interrogatories" to the jury along with the general verdict forms. In such circumstances, the factual questions provide an aid to jurors in focusing their deliberations, and also

permit insight as to the basis for the jury's general verdict. *Id.* The jury is responsible for applying the law to their answers to the written interrogatories and rendering a verdict on liability. *Id.*

In the present matter, the verdict form submitted to the jury contained sets of questions which the jury was required to answer by applying the law to the facts in order to arrive at an ultimate determination of liability as to each claim. Thus, the verdict form used by the district court in the matter at hand was subject to Rule 49(b).

Where it is claimed that the jury's answers to the written interrogatories are inconsistent, Rule 49(b) provides:

> ...When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

In its post-trial motion in the district court, NRTC asserted that the verdict form was erroneous because it permitted the jury to consider Sparton's estoppel claims even though the jury found the existence of a contract between the parties for the purchase of 35,000 additional LINK units. NRTC, however, had failed to object to the language in the verdict form that allowed for this prior to the submission of the verdict form to the jury. NRTC simply stated a general objection to the inclusion of Sparton's estoppel claims on the verdict form at all.

NRTC also had an opportunity to object to the verdict form and the jury's answers to the written interrogatories after the verdict was read and prior to the discharge of the jury, so that the district court could take appropriate action under Rule 49(b) to attempt to have the jury resolve the purported inconsistency. NRTC, however, failed to raise any such objection. The Sixth Circuit has held that, where a party has an opportunity to raise such an objection, but fails to do so, that party has waived the right to object to the general verdict on the grounds of an inconsistency with a special interrogatory. *Tennessee Consol. Coal Co. v. United Mine Workers*, 416 F.2d 1192, 1200-1201 (6th Cir. 1969), *cert. denied*, 397 U.S. 964 (1970). The strong rationale for this approach is that allowing a party to raise the issue after the discharge of the jury provides the unscrupulous with the ability to thwart the jury process through the misuse of procedural rules and, in-effect, jury shop. *Cundiff v. Washburn*, 393 F.2d 505, 507 (7th Cir. 1968). To allow a party to raise the issue of an inconsistency in the jury's verdict after the jury is discharged would allow a

party on the losing end of a jury verdict to effectively "hide in the weeds" and eliminate the possibility that the existing jury, which is apparently disposed to rule against them, could correct the inconsistency, thereby leaving the trial court with only one option to deal with the inconsistency – that being to set the matter for a new trial in front of a new, perhaps more sympathetic jury. *Id.* Several other Circuits also appear to generally concur with the waiver rule adopted by the Sixth Circuit. *See Id.* (7th Circuit); *Mason, supra*, (11th Circuit); *Skillin v. Kimball*, 643 F.2d 19, 19-20 (1st Cir. 1981); *Ludwig v. Marion Laboratories, Inc.*, 465 F.2d 114, 117-118 (8th Cir. 1972); *Austin v. Paramount Parks, Inc.*, 195 F.3d 715, 725-726 (4th Cir. 1999); *Simmons v. City of Philadelphia*, 947 F.2d 1042, 1056-1057 (3d Cir. 1991); *Stancill v. McKenzie Tank Lines, Inc.*, 497 F.2d 529, 534-535 (5th Cir. 1974).

The remaining Circuits appear to generally concur with the waiver rule, except in circumstances where an internal inconsistency in the general verdict is clear on its face, such that application of the waiver rule would permit a general verdict to stand that was plainly erroneous. *See Los Angeles Nut House v. Holiday Hardware Corp.*, 825 F.2d 1351, 1354-1356 (9th Cir. 1987); *Diamond Shamrock Corp. v. Zinke & Trumbo, Ltd.*, 791 F.2d 1416, 1421-1424 (10th Cir. 1986); *Armstrong v. Brookdale University Hosp.*, 425 F.3d 126, 135-136 (2d Cir. 2005).

This Court has not spoken directly to the matter of waiver of a litigant's right to subsequently raise the issue of an inconsistency in a jury verdict

under Rule 49(b) where the party failed to raise the issue prior to the discharge of the jury. Based on the strong rationale for requiring a party to raise the inconsistency issue prior to the discharge of the jury, and the substantial impact it has on the functioning and sanctity of the jury process, Sparton urges this Court to take this opportunity to explicitly adopt the waiver rule, and hold that NRTC is precluded from challenging the jury's general verdict in favor of Sparton on its advance materials claim on the basis of an alleged inconsistency with an answer to a special finding.[8]

In those circumstances where a party timely raises the issue of an inconsistency in a jury's verdict, this Court has held that a court reviewing the matter must attempt to reconcile the jury's verdict if possible under any view of the evidence in the case, by exegesis if necessary. *Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 364 (1962) (citing *Arnold v. Panhandle & S. F. R. Co.*, 353 U.S. 360 (1957)); *Gallick v. Baltimore & Ohio R.R. Co.*, 372 U.S. 108, 119 (1963).

In its post-trial motion and on appeal, NRTC argued that the jury's answers to the interrogatories relating to Sparton's promissory estoppel claim, and the general verdict in favor of Sparton on that claim, was inconsistent with, and precluded by, the jury's

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[8] The issue of "plain error" raised by some of the Circuits as essentially an exception to the "waiver" rule would not be implicated in this matter since, as is explained in more detail elsewhere in this petition, Tennessee law permits recovery on the basis of promissory estoppel in circumstances such as were found by the jury here.

answers to the written interrogatories finding the existence but no breach of a contract to purchase 35,000 additional LINKs. The Sixth Circuit attempts to skirt the Rule 49(b) issues of waiver and reconciliation implicated by NRTC's inconsistent verdict argument, by asserting that the actual problem was not with the "technical" inconsistency in the jury verdict itself, but rather with the instructions that allowed the jury to consider Sparton's estoppel claims even though it found that the parties had a contract for the purchase of 35,000 additional LINKs. There are several problems with the Sixth Circuit's analysis in this regard.

First, the Sixth Circuit completely ignores the fact that NRTC did not identify the language of the jury instructions as an issue in its post-trial Motion in the district court, *even in the context of its argument that there was an inconsistency in the jury's verdict.* The Sixth Circuit also fails to observe that NRTC did not identify the language of the jury instructions as one of its issues presented on appeal. The first and only reference made by NRTC to the jury instructions came in a single sentence in its appellate brief, wherein it made the general statement that, "[t]he Court's misapplication of the proper law of estoppel started with the jury instructions [footnote] and extended through its JMOL decision."[9] C.A. Appellants' Br. 24.

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[9] NRTC included a footnote in this sentence, which quoted the portion of the jury instructions providing that, "[i]f you award damages to Sparton for breach of contract by NRTC, then you need not consider the estoppel claims. If, however, you do not award damages to Sparton for breach of contract, then you must consider the estoppel claims."

The Sixth Circuit goes on to gloss over the fact that NRTC did not make any objection in the district court to the specific language contained in the jury instructions relating to the interplay between Sparton's breach of contract and estoppel claims, by suggesting that NRTC's general objection to the inclusion of any instruction on estoppel was sufficient. Fed. R. Civ. P. 51(c), however, requires a party to make an objection to a proposed jury instruction by, "stating distinctly the matter objected to and the grounds of the objection.". This Court has held that the objection must be stated in sufficient detail to provide the trial court with the ability to recognize and understand the nature of the deficiency being complained of and take steps to cure the problem, if necessary. *Palmer v. Hoffman*, 318 U.S. 109, 119 (1943). A general objection to a charge is insufficient to preserve an issue for appeal. *Id.* Thus, in order to preserve the issue for appeal, NRTC was required to make a sufficiently specific objection such as would have placed the district court on notice as to the language in the jury instructions that allowed the jury to consider Sparton's estoppel claims even if it found the existence of a contract between the parties. NRTC did not do so.

The effect of NRTC's failure to articulate a distinct objection to the language of the jury instructions was compounded by NRTC's aforementioned failure to object to the structure of the questions contained in the verdict form, which were consistent with the jury instructions, and NRTC's subsequent failure to object to any inconsistency between and among the jury's answers

to the written interrogatories and general verdict once they were read. If NRTC believed that there was an error in the language of the jury instructions, in the language of the verdict form, or in the jury's answers to the written interrogatories, it had ample opportunity to bring the issue to the district court's attention so that an attempt could be made to resolve the issue prior to the discharge of the jury. NRTC failed to do so. Given this, it was error for the Sixth Circuit to consider the issue of the structure of the jury instructions or the verdict form, because NRTC had failed to properly preserve the issue.[10]

The Sixth Circuit's focus on the language of the jury instructions and verdict form appears to have been an attempt to recast the issue on appeal away from NRTC's stated assertions of error relating to an inconsistency in the jury's verdict, in order to avoid dealing with the fact that NRTC had failed to object to any inconsistency prior to the discharge of the jury. The re-casting of the issue in this way led the Sixth Circuit to fail to make any real attempt to resolve the purported inconsistency in the verdict, as required by this Court. Had the Sixth Circuit undertaken such an analysis, it would have seen that there is at least one view of the case that could

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[10] Again, while Rule 51(c) allows a court to consider whether there was "plain error" in jury instructions, even where a party fails to make a proper objection to the instructions, under Tennessee law, the jury instructions and the verdict form did not contain "plain error" with respect to their treatment of the interplay between Sparton's breach of contract and estoppel claims relating to advance materials, as is subsequently discussed in this Petition.

resolve the perceived inconsistency and preserve the jury's verdict in favor of Sparton.

The Sixth Circuit based its decision that the jury instructions were improper on its stated belief that Tennessee law generally precludes a party from recovering on the basis of estoppel where there is a contract between the parties. Setting aside whether that is an accurate statement of Tennessee law as a general matter, the Sixth Circuit properly observes that Tennessee courts have in some circumstances approved of recovery on the basis of estoppel where doing so expands the rights of the parties to a contract. Pet. App. 1a, at 10 (citing *Bill Brown Constr. Co., Inc. v. Glen Falls Insurance Co.*, 818 S.W.2d 1, 9-11 (Tenn. 1991)). *See also Foster & Creighton Co. v. Wilson Contracting Co., Inc.*, 579 S.W.2d 422 (Tenn. App. 1978).

A careful review of the jury instructions and the verdict form in the present matter reveals that the jury was asked to answer two different questions with regard to the breach of contract and estoppel claims at issue. On the breach of contract claim, the jury was asked to determine whether NRTC breached a contract to purchase 35,000 additional LINK units. If the jury found a contract and a breach, Sparton's damages presumably would have encompassed the cost of the advance materials, inasmuch as the evidence indicated that the raw materials costs were factored into the contract price for the units. As for the estoppel issue, the jury was not asked to determine if NRTC was estopped from denying that it was liable for the purchase of 35,000 additional LINK units. Rather, the jury was asked

to determine whether Sparton acquired raw materials in reliance on representations made by NRTC.

Evidence was introduced indicating that Sparton began placing advance materials orders to support additional LINK production *prior to* the time the parties engaged in the discussions that created a binding contractual agreement as to the 35,000 additional units. Based on this, one legitimate view of the case would be that the jury determined that, while the parties may have eventually entered into a contract that required NRTC to purchase 35,000 additional LINK units, there may not have been any agreement in that contract as to the issue of who would be responsible for the costs of advance raw materials orders should the additional production not occur. Thus, the jury could have utilized the doctrine of promissory estoppel to determine a liability issue that it believed was not addressed by the parties' contract – effectively broadening the parties' rights and responsibilities – something the Sixth Circuit itself properly recognized was acceptable under Tennessee law.

The purpose of attempting to resolve an alleged inconsistency in a jury's verdict is grounded in the *Seventh Amendment*, which provides that, "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." As this Court opined in *Atlantic & Gulf Stevedores*, *supra*, "[w]here there is a view of

the case that makes the jury's answers to special interrogatories consistent, they must be resolved that way. For a search for one possible view of the case which will make the jury's finding inconsistent results in a collision with the *Seventh Amendment*." 369 U.S. at 364.

In the present matter, by focusing only on a view of the case that would render the jury's findings on Sparton's estoppel claims nugatory, and entirely failing to attempt to resolve the purported inconsistency in the jury's verdict framed by NRTC's post-trial and appellate arguments, the Sixth Circuit deprived Sparton of its Seventh Amendment jury trial right.[11] Such a clear deprivation of Sparton's Constitutional rights, in a manner completely at odds with the well-established precedent of this Court, requires the intervention of this Court to redress the wrong by granting Sparton's Petition and ultimately acting to reinstate the verdict of the jury in favor of Sparton on its promissory estoppel claim.

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[11] For a thorough discussion of the broad right to a jury trial as to equitable claims such as estoppel under Tennessee law, see the unpublished opinion of the Tennessee Court of Appeals in *Mobile Living, Inc. v. Tomlin*, 1999 Tenn. App. LEXIS 523 (unpublished, Tenn. Ct. App. 1999), (C.A. Appellee's Br. Add. A), and the authority cited therein.

II. THE SIXTH CIRCUIT'S ACTION IN ATTEMPTING TO UTILIZE ONLY ONE PORTION OF THE VERDICT FORM COMPLETED BY THE JURY AND DISREGARDING ANOTHER PORTION OF THE VERDICT FORM IN ORDER TO AVOID REMANDING THE MATTER FOR A NEW TRIAL SERVED TO IMPROPERLY DEPRIVE SPARTON OF ITS SEVENTH AMENDMENT RIGHT TO A JURY TRIAL.

If one views the issue raised by NRTC on appeal as being grounded in a supposed inconsistency in the jury's verdict, and one assumes, *arguendo*, that NRTC made a timely objection regarding the inconsistency, where, as NRTC asserts is the case here, there is an inconsistency between the answers to the written interrogatories and the general verdict, Rule 49(b) limits the trial court's options to either returning the jury for further deliberation in order to resolve the conflict, or ordering a new trial. Rule 49(b) does not allow the trial court to pick among the conflicting portions of the interrogatory answers and the general verdict and accept those portions it likes while ignoring those portions it does not. If, on the other hand, one views the issue raised by NRTC on appeal as being grounded in purported defects in the language of the jury instructions, the generally accepted remedy is to remand the matter for a new trial, *not* to simply enter a judgment in favor of the appellant.

Given the above, regardless of whether one casts the issue raised by NRTC's appeal as being grounded in defects in the jury instructions or as

being grounded in an inconsistency in the jury verdict, the only accepted remedy at the appellate level was to remand the matter to the district court for a new trial on Sparton's advance materials claims. The Sixth Circuit, however, did not remand the matter to the district court, but instead simply ignored the jury's findings on Sparton's promissory estoppel claim and accepted the portion of the verdict relating to Sparton's breach of contract claim.

The Sixth Circuit's attempt to pick and choose among the findings in the jury verdict highlights one of the fundamental problems with its attempt to divorce the issue of the supposed defect in the jury instructions from the issue raised by NRTC of the supposed inconsistency in the jury's verdict. The problem is that the only reason that the Sixth Circuit knew that the jury awarded Sparton damages on a promissory estoppel theory, even though it had also found that the parties had a contract for the purchase of 35,000 additional LINK units, was because of the existence of the jury's answers to the written interrogatories contained in the verdict form.[12] But-for the existence of the written interrogatories in the verdict form, the Sixth Circuit would have been faced with a general verdict indicating that the jury had found that there was no liability on the part of NRTC on the basis of breach of contract, but that there was liability on the basis of promissory estoppel. Under those circumstances, even though the Sixth Circuit believed that the

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[12] It is important to keep in mind that, in its appeal to the Sixth Circuit, NRTC did not challenge the validity of the district court's action in reinstating Sparton's estoppel claims during trial.

instructions that allowed the jury to consider Sparton's estoppel claims after making a finding of the existence of a contract were erroneous, it would have had no way to know whether the jury's general verdict of no liability on the breach of contract claim and liability on the basis of the promissory estoppel claim had anything to do with the purported error in the jury instructions. Therefore, the Sixth Circuit would have had no choice but to remand the matter for a new trial.

This simply demonstrates that, even if the Sixth Circuit believed there was error in the jury instructions and that the right to complain of the error on appeal had been properly preserved by NRTC, (or constituted "plain error"), it was improper for the Sixth Circuit to attempt to divorce that error from the issue of an inconsistency in the jury verdict and, thereby, simply accept one portion of the verdict while ignoring another. Under those circumstances, it was incumbent upon the Sixth Circuit to remand the matter for a new trial rather than simply ordering that judgment be entered in favor of NRTC. Entering judgment in favor of NRTC on Sparton's promissory estoppel claim, *in direct conflict with the jury's verdict that Sparton was entitled to recovery on that claim,* served to improperly deprive Sparton of its Constitutional right to a jury trial under the *Seventh Amendment* by depriving Sparton of the benefit of the jury's findings on the promissory

estoppel issue.[13] As Justice Stevens recognized in his dissent in *Los Angeles v. Heller*, 475 U.S. 796, 804-806 (1986) (Stevens, J. dissenting), "...if verdicts are genuinely inconsistent and if the evidence might support either of the 'inconsistent' verdicts, the appropriate remedy is ordinarily, not simply to accept one verdict and dismiss the other, but to order an entirely new trial."

The deprivation of Sparton's *Seventh Amendment* jury trial right, which was accomplished in a manner that substantially departs from the accepted and usual course of judicial proceedings, requires the intervention of this Court to redress the wrong by granting Sparton's petition and either ultimately acting to reinstate the verdict of the jury in favor of Sparton on its promissory estoppel claim, as is urged previously in this petition, or by acting to remand the matter to the district court for a new trial as to Sparton's advance materials claims.

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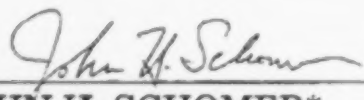
[13] It is important to note, as the Sixth Circuit itself observed, that in considering Sparton's estoppel claims the jury was properly following the jury instructions and the directions printed on the verdict form. Thus, this matter is distinguishable from those cases where courts have held that the jury's answers to certain questions in the verdict form should be ignored as surplusage, where the jury answered the questions in violation of the trial court's express instructions. *See Floyd v. Laws*, 929 F.2d 1390, 1394-1398 (9th Cir. 1991).

CONCLUSION

For the reasons stated, the Court should grant the petition.

Respectfully Submitted,



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Dated: December 20, 2007

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APPENDIX

ENTERED September 21, 2007

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
File Name: 07a0685n.06
Filed: September 21, 2007

Nos. 06-1582
06-1687

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT OF THE EASTERN DISTRICT OF MICHIGAN

SPARTON TECHNOLOGY, INC.,

Plaintiff-Appellee / Cross-Appellant,

v.

UTIL-LINK, LLC, and NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE,

Defendants-Appellants / Cross-Appellees.

Before: MARTIN and McKEAGUE, Circuit Judges; and GREER, District Judge. *

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* The Honorable J. Ronnie Greer, United States District Judge for the Eastern District of Tennessee, sitting by designation.

GREER, District Judge. The defendants-appellants/cross-appellees in this breach of contract/promissory estoppel case appeal from the denial by the district court of their motion for judgment as a matter of law and new trial after a jury trial. The plaintiff-appellee/cross-appellant appeals the district court's denial of its post-verdict motions for prejudgment interest and for Rule 11 sanctions. For the reasons which follow, we AFFIRM in part and REVERSE in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

National Rural Telecommunications Cooperative ("NRTC") is a District of Columbia cooperative corporation which acts as a purchasing cooperative for its member rural electric and telephone utilities. Util-Link, LLC ("Util-Link"), a Delaware limited liability company, was a partnership formed to develop and obtain production of "LINKs," automated electric utility meter reading units, which in turn were sold to NRTC, which then marketed and sold the devices to its member utilities. NRTC was part owner of Util-Link and provided operating capital to Util-Link. Sparton Technology, Inc. ("Sparton") is a New Mexico corporation engaged in contract manufacturing. It was stipulated by the parties that Util-Link was, for the purposes of this action, acting as the agent of NRTC. The district court treated Util-Link and NRTC as a single entity and this Court will do so as well.

In May 1997, Sparton and Util-Link entered into a manufacturing agreement for Sparton to manufacture and Util-Link to purchase 75,000 LINKs. The LINKs were to be manufactured pursuant to the design and testing specifications provided by Util-Link. From the outset, the LINK product was beset by serious problems related to various design and manufacturing flaws which led to numerous design changes in the product. As a result, certain raw materials that had been purchased by Sparton became obsolete and could no longer be utilized in production. Although not on the delivery schedule originally contained in the manufacturing agreement, the 75,000 LINKs were eventually produced and paid for by Util-Link. As a result of the alleged manufacturing defects, NRTC recalled all LINKs to have them examined and repaired as necessary. This recall was ultimately addressed under a "retrofit agreement" entered into between Sparton and NRTC, under which costs were shared.

In late 2000, Sparton and Util-Link began negotiations for a new manufacturing agreement. These negotiations continued for several months without a new agreement being executed. In February 2001, Sparton threatened to cancel advance orders for raw materials if Sparton failed to promptly receive a purchase order for additional LINKs. Util-Link told Sparton repeatedly that it could not issue a purchase order without receiving a corresponding purchase order from NRTC. On February 2, 2001, Util-Link notified Sparton that it had requested a purchase order from NRTC for an additional 35,000 LINKs and, as soon as NRTC's purchase order was received, Util-Link would issue a

purchase order to Sparton. Sparton advised Util-Link that advance materials were on order to support this additional production. A host of e-mails and letters were exchanged between March and May 2001, relating to the possible additional purchase of LINKs.

No purchase order was forthcoming after the February 2, 2001, notification and, on March 5, 2001, Sparton again threatened to cancel orders for raw materials needed for additional production. Util-Link responded on March 7, 2001, with an e-mail which stated: "there will be a purchase order released to Sparton to build 15,000 units beyond the original 75,000 unit order." On March 22, 2001, Util-Link issued a purchase order to Sparton for 15,000 LINKs units, though at a different price than had been discussed. The next day, Sparton scheduled delivery of the needed raw materials for the 15,000 units. Sparton and Util-Link continued to discuss a mutually agreeable price and Sparton indicated it would be willing to reduce the price if more than 15,000 units were purchased. On May 1, 2001, Sparton proposed a price of $109.00 per unit to produce 35,000 additional LINKs units. Util-Link concurred with the proposal through a pair of e-mails on the same day. In one of these e-mails, Util-Link stated: "Util-Link will pay Sparton $109.00/LINK 340-HL delivered under the current purchase order of 15,000 units . . ." Util-Link committed to order such additional units by purchase order to be issued within the next 90 to 150 days.

No purchase order had been received by Sparton by mid-June 2001. Around midyear, Util-

Link determined that it would not be able to continue in business without receiving additional capital contributions from NRTC. NRTC declined to make further capital contributions and, in August, 2001, it was decided that Util-Link would be dissolved and its LINK business merged into NRTC. NRTC then informed Sparton that it did not intend to go forward with purchase of additional LINK units.

Sparton filed suit in the federal district court on September 24, 2002, alleging the following counts: (I) breach of contract to purchase an additional 35,000 LINK units; (II) breach of the 1997 manufacturing agreement; (III) breach of the retrofit agreement; (IV) promissory estoppel regarding the additional 35,000 LINK units; and (V) equitable estoppel regarding the additional 35,000 LINK units. The promissory estoppel and equitable estoppel claims were stated alternatively, i.e., "[i]n the event that it is determined that there was not a contract for the manufacture of an additional 35,000 "LINK" units as alleged in Count I..." (First Amended Complaint, para. 54, 63). NRTC filed an answer and counter-complaint alleging breach of the manufacturing agreement and the retrofit agreement.

NRTC filed a motion for summary judgment on Counts I and III and partial summary judgment on Counts IV and V shortly thereafter and Sparton moved for summary judgment on the issue of whether a contract between Sparton and Util-Link existed as alleged in Count I of its complaint. On June 25, 2004, Sparton's counsel informed NRTC's counsel that Sparton would stipulate to the dismissal of its promissory and equitable estoppel

claims (Counts IV and V). Sparton's agreement was announced to the court on June 30, 2004, at the hearing on the parties' motions for summary judgment. No order was entered, however, as a result of Sparton's stipulation. On September 2, 2004, the district court denied Sparton's motion for summary judgment, and denied in part and granted in part NRTC's motion. Sparton's claims for breach of the retrofit agreement and for promissory and equitable estoppel were dismissed on the merits.

The matter proceeded to trial by a jury in September 2005, on Sparton's claims for breach of contract for the additional 35,000 LINK units and breach of the manufacturing agreement, as well as NRTC's counterclaim. On the fourth day of trial, the district court invited a motion from Sparton to reconsider its prior grant of summary judgment on the estoppel claims, saying it was "embarrassed" by the previous decision. Sparton's motion, opposed by NRTC, was then granted and the estoppel claims were reinstated.

At the conclusion of the trial, which continued sporadically over 16 days, the jury returned a verdict in the case. The jury found that NRTC had breached the 1997 manufacturing agreement and awarded Sparton $494,644.23 in damages for "obsolete materials." The jury further found that Sparton and NRTC had entered into a contract for the purchase of 35,000 additional LINKs, but determined that NRTC did not breach the agreement and awarded no damages to Sparton. The jury then found for Sparton on the "estoppel claims" and awarded damages of $3,087,043.09. The jury had

been instructed by the district court that it must consider the estoppel claims if it did not award damages to Sparton for breach of contract to purchase the additional 35,000 LINK units. Judgment was entered on the jury verdict on November 9, 2005.

NRTC moved for judgment as a matter of law (JMOL) and/or anew trial on grounds, among others, that the jury's finding of an express contract for the purchase of 35,000 additional LINK units precluded the jury's verdict on the estoppel claims and the evidence at trial did not support the damage awards. The district court denied NRTC's motion on the estoppel claims, holding that "[t]here is no need for the Court to involve itself in the esoterica of the right of plaintiff to assert both a contract and an estoppel, whether when there is a contract which binds the parties, a party may not rely on an estoppel. The fact of the matter is that there was not an enforceable contract for 35,000 additional LINKS." The district court did, however, suggest a remittitur in the damage award on the estoppel claims to $1,747,415.94 and to $171,360 on the obsolete materials claim. (Amended Decision On Defendant's Motions For Judgment As A Matter Of Law And New Trial, pp. 8-9). Sparton accepted the proposed remittiturs and an amended judgment was entered on April 5, 2006.

On November 21, 2005, Sparton filed a motion to amend the judgment to include prejudgment interest. The motion was denied by the district court on January 31, 2006. On November 23, 2005, Sparton filed a motion seeking Rule 11 sanctions

against NRTC regarding NRTC's counterclaim. This motion was denied by the district court on February 2, 2006.

NRTC timely filed a notice of appeal from the amended judgment on May 1, 2005. Sparton's notice of cross-appeal from the orders on its motions for prejudgment interest and Rule 11 sanctions was filed on February 2,2005. For the reasons which follow, we REVERSE the district court's judgment on Sparton's estoppel claims, AFFIRM the district court's judgment on NRTC's counterclaim and AFFIRM the district court's orders on Sparton's motions for prejudgment interest and Rule 11 sanctions.

II. ANALYSIS

On appeal, NRTC raises the following issues: (i) whether the district court erred in denying NRTC's motion for JMOL because the jury verdict, finding a contract for the sale of an additional 35,000 LINK units, precluded judgment on Sparton's alternative estoppel claims; (ii) whether the estoppel damage award is unsupportable as a matter of law; and (iii) whether the district court erred in not granting judgment as a matter of law on NRTC's counter-claim. Sparton claims: (i) that an award of prejudgment interest is mandatory under Michigan law; and (ii) that the district court abused its discretion in denying Sparton's motion for Rule 11 sanctions. We will address each issue in turn.[1]

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[1] The jury's verdict with respect to breach of the 1997 "retrofit agreement" and the resulting judgment in favor of Sparton on that issue have not been appealed.

A. Estoppel

A district court's legal conclusions are reviewed *de novo. Hadix v. Johnson,* 182 F.3d 400, 404 (6th Cir. 1999). Likewise, a district court's determination of a motion for judgment as a matter law is reviewed *de novo. Greene v. B.F. Goodrich Avionics Systems, Inc.,* 409 F.3d 784, 788 (6th Cir. 2005). In this diversity case, state law governs a Rule 50(b) motion. *Morales v. American Honda Motor Co., Inc.*, 151 F. 3d 500, 506 (6th Cir. 1998). Under Tennessee law, which the parties have agreed governs this case, in ruling on a motion for judgment as a matter of law (referred to as a directed verdict under *Tenn. R. Civ. Pro.* 50.01), trial courts must take the strongest legitimate view of the evidence in favor of the non-moving party, construing all evidence in that party's favor and disregarding all countervailing evidence. *Gaston v. Tennessee Farmers Mutual Ins. Co.,* 120 S.W. 3d 815, 819(Tenn.2003)(citing *Eaton v. McLain*, 891 S.W. 2d 587, 590 (Tenn. 1994)). A court may grant the motion only if reasonable minds could reach only one conclusion from the evidence. *Id.*

Sparton described its alternative estoppel claims as both promissory estoppel and equitable estoppel in its complaint. As an initial matter, equitable estoppel is not recognized as a cause of action in Tennessee but rather is an affirmative defense which creates no rights or cause of action but acts to protect rights acquired previously. *Jacobs v. Underhill,* 2003 WL 22955930 at * 1 (Tenn. App. 2003) *(citing Alexander v. Armentrout*, 24 S.W. 3d 267, 272 (Tenn. 2000)); see also 21 *Tennessee Practice Series Contract Law and Practice* § 11.47 (2006). Count

V of Sparton's amended complaint, therefore, does not state a cause of action and should have been dismissed for that reason.

Some earlier Tennessee decisions, yet to be explicitly overruled, hold that Tennessee does not recognize a claim for promissory estoppel. See *Pitts v. McGraw-Edison Company,* 329 F.2d 412, 416 (6th Cir. 1964) (citing *Barnes v. Boyd,* 18 Tenn. App. 55, 72 S.W. 2d 573 (Tenn. App. 1934)). Some federal courts sitting in Tennessee, on the other hand, have accepted and applied the doctrine for many years. *See United States For Use ofE &R Construction Co., Inc. v. Guy H. James Construction Company,* 390 F. Supp. 1193 (M.D. Tenn. 1972), *aff'd* 489 F.2d 756 (6th Cir. 1974). Despite this confusion, there exists no reasonable question today about whether promissory estoppel is clearly recognized in Tennessee. In 1978, a Tennessee Court of Appeals decision explicitly recognized a remedy on this basis, although the decision relied on out of state precedents. *Foster & Creighton Co. v. Wilson Contracting Company, Inc.,* 579 S.W.2d 422 (Tenn. App. 1978). Finally, however, the Tennessee Supreme Court, after finding it unnecessary to decide the issue as late as 1982, *see Alden v. Presley,* 637 S.W. 2d 862 (Tenn. 1982), unequivocally accepted promissory estoppel as a cause of action in 1991. *Bill Brown Construction Co., Inc. v. Glen Falls Insurance Company,* 818 S.W.2d 1 (Tenn. 1991).

> Promissory estoppel in Tennessee is described as:

> A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.

Amacher v. Brown-Forman Corp., 826 S.W.2d 480, 482 (Tenn. App. 1991) (quoting Restatement of Contracts 2d. § 90). "The limits of promissory estoppel are: (1) the detriment suffered in reliance must be substantial in an economic sense; (2) the substantial loss to the promisee in acting in reliance must have been foreseeable by the promisor; and (3) the promisee must have acted reasonably in justifiable reliance on the promise as made." *Calabro v. Calabro*, 15 S.W.3d 873, 879 (Tenn. App. 1999).

Although Tennessee does recognize a claim of promissory estoppel, it does not liberally apply the doctrine and limits its application to "exceptional cases." *Barnes & Robinson Company, Inc. v. OneSource Facility Services, Inc.*, 195 S.W.3d 637 (Tenn. App. 2006). Such exceptional cases are found only where defendant's conduct is akin to fraud. *Shedd v. Gaylord Entertainment Company*, 118 S.W.3d 695 (Tenn. App. 2003). A promissory estoppel claim is not dependent on the finding of an express contract between the parties, *Engenius Entertainment, Inc. v. Herenton*, 971 S.W.2d 12, 19 (Tenn. App. 1997), but the court must first determine whether an enforceable contract exists. *Calabro*, 15

S.W. 3d at 879. Promissory estoppel is an alternative theory to recovery on an express contract. *Operations Management International, Inc. v. Tengasco, Inc.*, 35 F. Supp.2d 1052 (E.D. Tenn. 1999). While cases do exist where the doctrine has been applied where the parties have contracts, these cases have been limited to cases where a claim of promissory estoppel was advanced to expand the terms of, not change the terms of, an existing contract. *Bill Brown,* 818 S.W.2d at 9-11. Where the parties have an enforceable contract, however, and merely dispute its terms, scope or effect, one party cannot obtain recovery based upon promissory estoppel. *Terry Barr Sales Agency, Inc. v. All-Lock Company, Inc.*, 96 F.3d 174 (6th Cir. 1996) (applying Michigan law); *Johnson v. Metropolitan Government of Nashville,* 2002 WL 31769125 (Tenn. App. 2002); *perm. app. denied May 5,* 2003. Once an express contract is found, therefore, the alternative claim of promissory estoppel becomes moot. *Johnson,* 2002 WL 31769125 at*10.

NRTC argues that the jury verdict finding a contract between Sparton and NRTC for the manufacture and sale of 35,000 additional LINKs precluded judgment on the alternative estoppel claim and that the damage verdict is unsupportable as a matter of law. Sparton responds that NRTC waived any argument based on the inconsistency in the jury's finding of both an expressed contract and promissory estoppel, that the trial court eliminated any inconsistency by its ruling that the evidence did not support the jury's finding as to the existence of a contract, and that the jury's verdict was not inconsistent under Tennessee law. We hold that the

jury's finding that a contract for the manufacture and purchase of the additional LINKs existed precludes, as a matter of law, a damage award based on promissory estoppel concerning the same subject matter and we reject Sparton's arguments for the reasons which follow.

As to NRTC's alleged waiver of its argument, Sparton argues that NRTC failed to object to the flaws in the jury instruction and verdict form prior to their submission to the jury and thus waived its right to later object. This argument is plainly without merit. The record in this case clearly establishes that NRTC objected numerous times to the inclusion of the promissory estoppel instructions in the jury instructions and did so just prior to submission of the case to the jury. Sparton also argues that NRTC's failure to object to the inconsistent verdict prior to the discharge of the jury constitutes a waiver under Federal Rule of Civil Procedure 49(b). Rule 49(b) is inapplicable in this case, however, because the verdict, while technically inconsistent because the finding of a contract forecloses an award of estoppel damages on the same subject matter, was consistent with the procedure the jury was instructed to follow in the district court's instructions. If the jury had been correctly instructed that it should not consider the promissory estoppel claim if it first found a contract, the inconsistency would not have occurred. Rather, the jury was instructed to consider the promissory estoppel claim if they did not *award damages* for the breach of any contract found, an instruction which was contrary to Tennessee law. Given the jury instructions, objected to by NRTC, it would have

been fruitless for NRTC to seek to have the jury return for further consideration of its answers. We find no merit to this argument.

Sparton next argues that the district court eliminated any inconsistency in the jury verdict through its determination that the jury's verdict as to the existence of a contract was not supported by the evidence. The district court *sua sponte* held in its order on the motion for JMOL and/or new trial that it need not determine whether Sparton could recover on its promissory estoppel claim in the face of the jury's finding of the existence of a contract "because there was not an enforceable contract for 75,000 additional LINKS." Sparton's argument is flawed for several reasons.

It is doubtful, first of all, that the district court could *sua sponte* grant judgment as a matter of law on the contract finding where no party had requested that it do so. *See, e.g., American and Foreign Insurance Company v. Bolt,* 106 F.3d 155,159 (6th Cir. 1997) (holding that "allowing a judge to *sua sponte* raise a new issue post-verdict, and proceed to overturn a jury verdict on that basis contravenes the dictates of Rule 50(b)"). Even if the district court could do so, nothing suggests that the district court applied the appropriate standard in reaching its decision; that is, taking the strongest legitimate view of the evidence in favor of the existence of the contract finding (a position Sparton had pursued throughout the litigation as its primary claim), allowing all reasonable inferences to be drawn therefrom, discarding all countervailing evidence,

and denying the motion if there is any doubt as to the conclusion to be drawn from the whole evidence.

In addition, when the proof is viewed under the correct standard, the strongest legitimate view of the evidence supports the finding of the existence of a contract. Whether the district court, or this Court, would have found the existence of a contract as the trier of fact is irrelevant. It goes without saying that neither the district court nor this Court may substitute its own findings for those of the jury and thus disregard a jury verdict, except when the jury's verdict is against the clear weight of the evidence. A jury's verdict that could have reasonably been reached should be left undisturbed. *Bruner v. Dunaway,* 684 F.2d 422, 425 (6th Cir. 1982). As the facts set forth above illustrate, the district court improperly set aside the contract finding. As the district court noted in its order denying Sparton's motion for summary judgment on the contract issue, "[a] finder of fact could conclude, based on the series of communications, that a firm contract for 35,000 LINK units was agreed upon by the parties... This is a determination for a finder of fact." (District Court's Memorandum and Order at 17). Hence, the breach of contract claim was tried to the jury which, on consideration of the fully developed record, determined that there was indeed a contract between the parties governing the 35,000 LINK units, a contract however, which NRTC was found not to have breached.

Sparton lastly argues that Tennessee law permits recovery on both breach of contract and promissory estoppel claims. As set forth above, a recovery for promissory estoppel, where the parties

have an enforceable contract, is limited to situations where promissory estoppel applies to matters outside the terms or scope of the existing contract. Sparton has cited no case which permits a recovery on a promissory estoppel theory where the dispute involves the terms of an express contract. While Sparton claims that NRTC has failed to present a Tennessee case standing for the proposition that estoppel and breach of contract claims are mutually exclusive, none of the cases cited by Sparton permit such a dual recovery. Importantly, however, Sparton's own pleadings illustrate the lack of merit in Sparton's position. The estoppel claims were presented in Sparton's complaint as alternative claims, upon which recovery could be had "[i]n the event that it is determined that there was not a contract between the parties for the manufacture of an additional 35,000 "LINK" units." Moreover, Sparton acknowledged, in a pleading filed on September 10, 2004, the alternative nature of its claims and said: "the plaintiff could prevail on either the contract claim or the estoppel claims at trial, not both." Sparton also acknowledged that it had dismissed the estoppel claims because "it was determined that the prosecution of the remainder of the case would be stronger and more focused, without the necessity of proceeding with those counts." (Sparton's Brief at 15). Furthermore, a review of Counts I and IV of Sparton's first amended complaint indicates that both counts deal with the same terms and scope and, in fact, seek damages in identical amounts for identical alleged losses.

We conclude, therefore, that the district court should have granted JMOL onNRTC's motion and the

judgment in favor of Sparton on its promissory estoppel claim in the amount of $1,747,415.94 must be reversed and vacated. As a result of our holding, we need not address the other grounds upon which NRTC attacks the promissory estoppel judgment.

B. Breach of the 1997 Manufacturing Agreement

In its counter-complaint, NRTC alleges a breach by Sparton of the 1997 manufacturing agreement and specifically alleges that Sparton failed to produce LINKS units in a workmanlike manner. NRTC argues on appeal that "[t]he evidence conclusively established that there were manufacturing defects" in the LINK units manufactured by Sparton, in violation of § 7.1 of the manufacturing agreement. NRTC cites testimony from Sparton personnel admitting that certain manufacturing defects existed relating to the LINK units. Sparton, on the other hand, points to testimony in the record which characterized the defects as minor and occurring in only a small number of the units produced. There was also testimony that some of the defects were design defects which were the responsibility of Util-Link, as well as testimony that Sparton cured all of the referenced manufacturing defects by repairing or replacing the LINK units returned to it.

Our standard of review on this issue is the same as the standard of review applied on Sparton's estoppel claims. We review the district court's determination of a motion for judgment as a matter of law *de novo,* as set forth above. A court should

grant the motion only if reasonable minds could reach only one conclusion from the evidence. We agree with the district court that there is no need for any extended discussion on this issue. Even a cursory review of the record in this case establishes conflicting evidence on this issue which the jury reasonably resolved in favor of Sparton. We cannot say, as a matter of law, that reasonable minds could draw but one conclusion from the evidence on this issue and we, therefore, affirm the district court on this issue.

C. Prejudgment interest

On November 21,2005, Sparton filed a motion to amend judgment seeking an award of prejudgment interest on the $3,581,687.32 damages award.[2] While acknowledging the parties' agreement to apply Tennessee law in this case, Sparton, in its motion, asserted that Michigan law should be applied on the issue and "that the court can allow such interest." Sparton also argued, however, that, if NRTC were to argue that Tennessee law should be applied to the question of prejudgment interest, then Tennessee law provides for such interest. (Brief in Support of Motion to Amend Judgment at 3). NRTC responded that the court should exercise its discretion to deny the request for prejudgment interest. Relying on Michigan law, the district court denied the motion based upon its asserted discretion to do so.

Sparton now argues that an award of prejudgment interest is mandatory under Michigan

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[2] As set forth above, this damages award was later reduced to $ 1,918,775.94 when Sparton agreed to the suggested remittitur by the district court.

law and argues that NRTC waived the right to argue that Tennessee law applies by not explicitly so asserting in its reply to Sparton's motion in the district court. We disagree with Sparton for a simple reason. Throughout this litigation, the parties agreed to apply Tennessee law. The only reason advanced by Sparton for applying Michigan law is that NRTC allegedly waived its right to insist that Sparton be held to its agreement by not explicitly objecting to Sparton's claim in its reply to Sparton's motion. We find such an argument to be unpersuasive. We see no good reason not to enforce the parties' agreement and apply Tennessee law.

Under Tennessee law, prejudgment interest is authorized by T.C. A. § 47-14-123, but is not allowed as a matter of right on unliquidated claims for damages, and its allowance is within the sound discretion of the trial judge, *B.F. Myers & Son v. Evans,* 612 S.W.2d 912 (Tenn. App. 1980). The district court's decision to deny prejudgment interest will not be reversed absent a "manifest and palpable" abuse of discretion. *Otisv. Cambridge Mut. Ins. Co.,* 850 S.W.2d 439 (Tenn 1992). Sparton does not argue that there is an abuse of discretion and we find none from the record in this case. We therefore affirm the district court's denial of Sparton's motion.

D. Rule 11 sanctions

On November 23, 2005, Sparton moved for sanctions pursuant to Federal Rule of Civil Procedure 11 regarding NRTC's counterclaim. The district court denied the motion by order entered on

February 2, 2006. In denying the motion, the district court noted that plaintiff's brief contained only a brief discussion regarding the lack of merit of the counterclaim and the speculative evidence of damages introduced by defendants at trial. Sparton made no reference to the court's decision on Sparton's motion for summary judgment nor did it make any reference to the testimony or exhibits at the 16-day trial which led to the jury's verdict.

We review the district court's determination on the motion for Rule 11 sanctions under an abuse of discretion standard. *Cooter & Gell v. Hartmarx Corp.,* 496 U.S. 384, 405, 110 S. Ct. 2447, 2460-61, 110 L. Ed. 2d 359 (1990). "An abuse of discretion will not be found unless we have a definite and firm conviction that the trial court committed a clear error of judgment." *Friedler v. Equitable Life Assurance Society,* 86 Fed. Appx. 50 (6th Cir. 2003) (citing *Tahfs v. Proctor,* 316 F.3d 584, 593 (6th Cir. 2003)) (internal quotations marks omitted).

The district court noted that "Sparton has not taken the time or put forth the effort to persuade the court" to conclude that NRTC's claim was frivolous and that Rule 11 sanctions should be imposed. Sparton has not done so in this court either. Sparton's brief contains sweeping conclusory statements concerning the lack of merit of the NRTC counterclaim but has made no effort to address the deficiencies noted by the district court in its argument. In fact, Sparton completely ignores the district court's decision on Sparton's motion for summary judgment on the counterclaim and does not cite a single reference to the transcript of the 16-day

trial. Under these circumstances, we find no abuse of discretion and affirm the district court.

CONCLUSION

For all the reasons set forth above, we **REVERSE** the judgment of the district court on Sparton's estoppel claims and **REMAND** for entry of judgment in favor of NRTC on Sparton's Count IV and V estoppel claims. We also **AFFIRM** the district court's denial of NRTC's motion for judgment as a matter of law on its counterclaim and **AFFIRM** the district court's orders on Sparton's motions for prejudgment interest and Rule 11 sanctions.

ENTERED April 5, 2006

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SPARTON TECHNOLOGY, INC.,
Plaintiff,

Case No. 02-73819

v.

HONORABLE AVERN COHN

UTIL-LINK, LLC, et al,

Defendants.

_____/

AMENDED JUDGMENT – FINAL

On April 03, 2006 the Plaintiff accepted the proposed remittitur as described in the Amended Decision on Defendant's Motions for Judgment as a Matter of Law and New Trial, entered March 27, 2006 (D/E 150). The judgment entered on November 09, 2005 (D/E 132) is amended as follows and is final:

IT IS ORDERED AND ADJUDGED that the Plaintiff recover from the Defendant the sum of **one hundred seventy one thousand three hundred and sixty dollars ($171,360.00) for obsolete materials and one million seven hundred forty seven thousand four hundred and fifteen dollars and ninety four cents ($1,747,415.94) for excess materials.**

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant recover nothing on its counterclaim as reflected in the jury verdict.

DAVID WEAVER

Dated: April 05, 2006

By: s/ Julie Owens
Deputy Clerk

ENTERED March 27, 2006

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SPARTON TECHNOLOGY, INC.,
A New Mexico corporation,

Plaintiff,

-vs- Case No. 02-CV-73819-DT
HON AVERN COHN

UTIL-LINK, LLC, a Delaware Limited Liability Company, NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE, a District of Columbia corporation,

Defendants.
_____/

AMENDED DECISION ON DEFENDANT'S MOTIONS FOR JUDGMENT AS A MATTER OF LAW AND NEW TRIAL

I. INTRODUCTION

This is a contract case. On November 7, 2005, following a sixteen (16) day trial, a jury returned a verdict in favor of plaintiff for $494,644.23 on the claim that defendant[3] breached the 1997

[1] Initially there were two defendants named in the case, Util-Link, LLC and National Rural Telecommunications Cooperative (NRTC). Although Util-Link, LLC was a separate entity at the inception of the parties' relationship, it ultimately

manufacturing agreement by failing to pay for obsolete materials and for $3,087,043.09 on the claim that plaintiff justifiably relied on promises by defendant which defendant should have reasonably expected would induce action by plaintiff with respect to excess raw materials. The jury rejected plaintiff's claim that defendant breached the 1997 manufacturing agreement by failing to pay for testing equipment. The jury also found that the parties contracted for an additional 35,000 LINKS,[4] LINKS being the subject matter of the relationship, and that defendant did not breach this agreement by failing to purchase these LINKS. Lastly, the jury rejected defendant's claim that plaintiff breached the 1997 manufacturing agreement by producing LINKS which were defective and by failing to repair and replace defective LINKS. A judgment for $3,581,687.32 was entered in favor of plaintiff on November 8, 2005.

Now before the Court are defendant's motions for judgment as a matter of law and new trial on grounds which will be discussed *seriatim*. For the reasons which follow, defendant's motion for judgment as a matter of law is DENIED, defendant's motion for a new trial is GRANTED on the obsolete materials claim unless plaintiff agrees to a remittitur as will be described, and GRANTED on plaintiff's raw

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became a wholly owned subsidiary of NRTC and was later dissolved. The jury was instructed to treat the two defendants as a single entity.

[2] A LINK is an automated meter reading device at a residence which transmits electrical usage data over the residential telephone line to a central location for billing.

materials claim unless plaintiff agrees to a remittitur as will be described.

II. BACKGROUND

The background of the case is described in the Memorandum and Order Granting in Part and Denying in Part Defendant's Motion for Partial Summary Judgment and Denying Plaintiff's Partial Motion for Summary Judgment, filed September 2, 2004.

Pretrial proceedings as well as the trial were contentious and grossly over-lawyered.

No useful purpose would be served by an extended discussion of the testimony and exhibits at trial;[5] rather, such of the evidence as is relevant will be discussed in considering the various grounds asserted in defendant's motions.

III. LEGAL STANDARDS

By agreement of the parties Tennessee law governs.

Defendant does not discuss the standards to be followed by the Court in deciding a motion for judgment as a matter of law (JMOL) under Fed. R. Civ. P. 50(b) or a motion for new trial under Fed. R. Civ. P. 59.

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[3] Over 20 witnesses testified live or by deposition. Plaintiff placed in evidence over 100 exhibits; defendant placed in evidence over 50 exhibits.

In a diversity case such as this, state law governs a Rule 50(b) motion. Morales v. American Honda Motor Co., Inc., 151 F.3d 500 (6th Cir. 1998). Federal law, however, governs a Rule 59 motion. Id.

On a JMOL motion Tennessee law

> [requires] that trial judges and appellate courts take the strongest legitimate view of the evidence in favor of the plaintiff, allow all reasonable inferences to be drawn therefrom in his favor, discard all countervailing evidence and deny the motion if there is any doubt as to the conclusions to be drawn from the whole evidence; a verdict should be directed only if reasonable minds could draw but one conclusion."

Saul v. Evans, 635 S.W.2d 377, 379 (Tenn. 1982) (citations omitted).

In this Circuit, the standard for granting a motion for new trial is as follows:

> A court may set aside a verdict and grant a new trial when it is of the opinion that the verdict is against the clear weight of the evidence; however, new trials are not to be granted on the grounds that the verdict was against the weight of the evidence unless that verdict was unreasonable. Thus, if a reasonable juror could reach the challenged verdict, a new trial is improper.

Tisdale v. Federal Express Corp., 415 F.3d 516, 528-29 (6th Cir. 2005)(quoting Barnes v. Owens-Corning Fiberglass Corp., 201 F.3d 815, 820-21 (6th Cir. 2000)).

Although defendant has not moved for a remittitur, in light of the Court's finding that a new trial is warranted unless plaintiff agrees to a remittitur, it is appropriate to set forth the grounds for a remittitur. "[A] motion for new trial seeking a remittitur of a jury's verdict... should be granted only if the award clearly exceeds the amount which, under the evidence in the case, was the maximum that a jury could reasonably find." Roush v. KFC Nat'l Management Co., 10 F.3d 392, 397 (6th Cir. 1993) (citation and internal quotation marks omitted). Importantly, "[w]here '[t]he defects in the award are readily identified and measured, remittitur is more appropriate than a new trial." Strickland v. Owens Corning, 142 F.3d 353, 359 (quoting Kolb v. Goldring, Inc., 694 F.2d 869, 875 (1st Cir. 1982) (ordering a new trial on the question of damages unless plaintiff consents to a remittitur)).

With these standards in mind, the Court will consider defendant's motions.

IV. THE OBSOLETE MATERIALS CLAIM

Defendant asserts there is not sufficient evidence to support the jury's finding that it breached the 1997 manufacturing agreement by failing to pay for raw materials made obsolete by change orders, and if there is such evidence, it is insufficient to support the $494,000.00 loss claimed by plaintiff.

Plaintiff says that paragraph 3.3 of the 1997 manufacturing agreement (PX 1) provides for changes in the initial specifications of the LINK, and that the price increases or decreases occasioned by change orders were subject to joint agreement. Changes were made in the specifications over time, and in the course of the changes defendant agreed to be responsible for the cost of raw materials made obsolete by the changes.

Under the 1997 manufacturing agreement, plaintiff was to manufacture 75,000 LINKS to defendant's design at a fixed price to be delivered over a two (2) year period. Plaintiff was to be responsible for "all materials procurement including mechanical components, inventory costs. . . ."[6] Defendant had the right to change the specifications by engineering change notices. Price changes were to be jointly agreed upon.

Notwithstanding the multitude of e-mails and memoranda of conversations and the like between the parties, there is no document which mentions obsolete raw materials or reflects an indication that the costs of such raw materials made obsolete by change orders were to be charged to defendant and were not reflected in the adjustment of prices occasioned by changes in the specifications. Indeed, nothing was said in the 1997 manufacturing agreement, *per se,* about raw materials made obsolete by the changes. Thus, plaintiff's assertion that defendant was to be responsible for the cost of

---

[4] Plaintiff is a contract manufacturer. It does not hold raw materials in inventory; rather, it purchases raw materials on the basis of sales orders and forecasts.

raw materials in inventory made obsolete by change orders rests on its version of the conclusions to be drawn from the conversations between the parties regarding change orders. Viewing this evidence in a light most favorable to plaintiff, the Court is satisfied that it was not unreasonable for the jury to find that in the conversations between the parties relating to change orders defendant agreed to be responsible for the cost of obsolete raw materials outside the price charges occasioned by the change orders. As such, defendant is not entitled to a JMOL on this claim.

As to the amount of the verdict however, the evidence supports a loss to plaintiff at the most of $171,360.00, not the $494,644.23 awarded by the jury. There are serious defects in the proofs as to the dollar amount of the obsolete raw materials claimed by plaintiff.

Plaintiff in its response brief cites five (5) exhibits which arguably support and define the amount of its damages for obsolete raw materials. The exhibits, however, do not do that.

PX 101 - This is the initial bill of materials. It reflects each of the parts used in the assembly of a LINK.

PX253- This is a compilation of change orders. The change orders are intended to reflect the changes in the parts of a LINK. The change orders do not display the particulars of parts deleted and added or changes in the prices of a LINK

occasioned by the change orders. The change orders also do not describe raw materials which were made obsolete by the change orders.

PX 59 - This is presumably the last bill of materials intended to describe the specifications for a LINK in its last ideation. It does not coordinate with PX 101. Likewise, PX 101 and PX 253 are not coordinated so as to describe raw materials which became obsolete as a consequence of change orders.

PX 11 - This is a description of the obsolete raw materials held by plaintiff including the number on hand and dollar value. There are twelve (12) in number; only six (6) are listed as "removal - redesign." The reasons for being obsolete for the other six (6) have nothing to do with redesign. The dollar value of the six (6) which became obsolete by reason of redesign is $171,369.00.

PX 55 - This is a summary of the total of the damages claimed by plaintiff. For obsolete raw materials it includes cost, interest and related charges consisting of in-bound freight, recurring capital/safeguarding costs of storage, and cost of managing inventories for the 4 years ended June 30, 2005. There is no explanation of

> why plaintiff did not dispose of the obsolete raw materials once they became obsolete.

Although the Court accepts that the jury reasonably found that defendant agreed to be responsible for the cost of obsolete raw materials outside the price charges occasioned by the change orders, the evidence, outlined above, supports a loss to plaintiff at the most of $171,360.00. Therefore, unless plaintiff accepts a remittitur **within 10 days** as to the amount of loss suffered by Sparton for obsolete materials of $171,360.00, defendant is entitled to a new trial on this claim.

V. THE EXCESS RAW MATERIALS CLAIM

A. REINSTATEMENT OF THE PROMISSORY AND EQUITABLE ESTOPPEL CLAIMS

Counts 4 and 5 of the complaint asserted claims of promissory and equitable estoppel arising out of the acquisition of raw materials by plaintiff in anticipation of an order for an additional 75,000 LINKS by defendant. These claims were dismissed in the Memorandum and Order of September 2, 2004 on the grounds that plaintiff was unable to identify any evidence of reliance. On September 30, 2005 the Court entered an order reinstating these claims for the reasons stated in the Order Reinstating Plaintiff's Claims of Promissory and Equitable Estoppel.

Defendant now asserts that it was improper to reinstate these claims because defendant prepared

for and began the trial based on the Court's earlier determination that it faced only a claim for breach of contract. Plaintiff says in response that defendant has not shown that it was prejudiced by reinstatement of these claims.

Notwithstanding the jury's ultimate finding that there was a contract for an additional 35,000 LINKS, it was clear to the Court after only a few days of trial that the parties never entered into a contract for additional LINKS, and that what the evidence likely showed was that plaintiff was led to believe by defendant that it intended to order an additional 35,000 LINKS and therefore managed its raw materials inventory to assure that it was in a position to manufacture the additional LINKS once it received orders for them without delay. This in essence was the reason for reinstating the claims of promissory and equitable estoppel.

Defendant has not shown any substantive prejudice by reinstatement of these claims. At the time these claims were dismissed, discovery was almost complete, and all of the deposition testimony used at trial available. Defendant did not ask for a recess so it could take additional deposition testimony or better prepare itself to meet these claims. Defendant did not ask that any witness whose testimony had been completed be recalled. Defendant had yet to present its defense.

In sum, defendant simply argues prejudice. Defendant had a full and fair opportunity to meet the claims of promissory and equitable estoppel and offers

no good reason for the Court to reconsider the order reinstating these claims.

B. THE RELATIONSHIP BETWEEN THE CONTRACT FOR 35,000 ADDITIONAL LINKS AND THE ESTOPPEL CLAIM

1.

The jury found that the parties contracted for 35,000 additional LINKS and that defendant did not breach the contract by failing to purchase them. The jury also found that plaintiff justifiably relied on a promise by defendant which defendant should have reasonably expected would induce action by plaintiff with respect to excess raw materials. Defendant says that these two findings are inconsistent, and therefore the Court must set aside the estoppel finding.

Plaintiff responds by saying (1) defendant waived any inconsistency in the form of the verdict and (2) when the jury returned with the inconsistent finding defendant should have immediately called it to the Court's attention and asked that the jury be told of the inconsistency and be given the opportunity to reexamine its verdict. Additionally, plaintiff says that there was no inconsistency between the jury finding that there was a contract for an additional 35,000 LINKS and the jury finding defendant was estopped to deny a promise relating to excess raw materials since the two covered separate subject matter.

There is no need for the Court to involve itself in the esoterica of the right of plaintiff to assert both a contract and an estoppel, or whether when there is a contract which binds the parties, a party may not rely on an estoppel. The fact of the matter is that there was not an enforceable contract for 35,000 additional LINKS.

2.

The evidence at trial established the following:

Beginning late in 2000, the parties began discussing a contract for an additional 35,000 LINKS. They did not come to a complete agreement because of disagreement over price. By the end of June, 2001, plaintiff was desperate to obtain a purchase order for additional LINKS, since it had on hand some $1.6 million dollars in raw materials which it would have to write off. On June 30, 2001, at plaintiff's urging, defendant issued a purchase order (PX 38) reading as follows:

> This is a blanket agreement indicating Util-LINK'S intent to purchase 35,000 units of the Link AMR from Sparton Electronics, Inc.
>
> Orders for specified quantities of product units will be issued by firm releases only against this blanket agreement and will be so identified by

> written directives from the President of Util-LINK, or his authorized designee.
>
> The production release quantities will be in minimums of 5,000 units.
>
> Util-LINK is under obligation to purchase only quantities specifically released under this blanket agreement. Util-LINK will incur no penalty or liability for any units or raw material inventory beyond the firm release. Util-LINK may cancel this blanket agreement at any time without liability or penalty for units beyond the firm release.[7]
>
> Util-LINK will be obligated for units under the current firm release.

The purchase price for units under this blanket agreement is $109 per unit.

> Delivery items will be identified in each respective release.

Clearly, defendant was not obligated to purchase 35,000 LINKS under the purchase order until it issued releases, and since it never issued releases, there was no obligation, and since there was no obligation, there was no breach.

Looking at the instructions to the jury, it is clear that there is no inconsistency between the finding of a contract and a finding of an estoppel, as reflected in the verdict. The instructions read:

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[5] Emphasis added.

. . .you are required to decide whether NRTC entered into a contract with Sparton requiring NRTC to purchase an additional 35,000 units beyond the initial 75,000 units covered by the 1997 Manufacturing Agreement. In order to answer this question "yes," Sparton has the burden of proof to establish by a preponderance of the evidence that there was such a contract.

A contract is an agreement or exchange of promises between two or more persons to do or not to do certain things. This agreement or exchange of promises can be oral or in writing and must be supported by something of value. The requirements for a valid contract are an offer, an acceptance, consideration, competent parties and a legal purpose. A contract for the sale of goods (such as the LINKs) can be made in any manner sufficient to show agreement.

One of the issues you must decide is whether a contract was formed which obligated NRTC to purchase additional LINK units beyond the initial 75,000 covered under the 1997 Manufacturing Agreement.

An offer occurs when one party communicates to the other a willingness to enter into a contract. The communication must be made under circumstances that would justify the other party in understanding that an agreement would result if the offer were accepted.

An acceptance occurs when a party communicates by words or actions an agreement to the essential terms of an offer. It must be made before the offer is withdrawn and must match the essential terms of the offer, although it may include additional or different terms than those included in the offer.

For there to be a sufficient exchange of consideration, something of value must be bargained for and given in exchange for the other party's promise. Something of value may be a promise, an act, or forbearance. It can be a benefit to one party or a detriment to the other party. Its actual value in money terms is not important.

A contract can be made up of several different documents if the parties intended that the various documents would be one contract.

Sparton says it made an offer to NRTC to manufacture the additional 35,000 units. Sparton also says NRTC sent a written response to its offer. You must decide whether the response was an acceptance of Sparton's offer.

NRTC's response was an acceptance if it indicated NRTC had a present intention of buying 35,000 additional units even though NRTC's response stated terms that were not in Sparton's offer or that were different from those in Sparton's offer. However, if the

response indicated that NRTC intended to accept Sparton's offer only if Sparton agreed to the additional or different terms, then the response is not an acceptance unless Sparton later indicated in any reasonable manner that it agreed upon those terms.

If you decide that the writings of Sparton and NRTC are sufficient to establish an enforceable contract for the purchase of an additional 35,000 LINKs, you must then decide what terms were included in the contract.

If you find the parties agreed upon all essential terms, then the contract will only include those terms in the offer to which the parties agreed; however, the contract can be found to include additional or different terms contained in NRTC's written acceptance if Sparton through its words or actions indicated in any reasonable manner that it agreed to the additional or different terms.

What the parties say they intended or thought is not to be used in determining whether an agreement was made or the terms of the agreement. Rather, you must look to the outward manifestations of intent, such as what the parties wrote or did or said to see if an agreement was made and what the terms of the agreement are.

If you find that there was a contract requiring NRTC to purchase 35,000 additional units, then you must determine

whether NRTC breached the contract for the purchase of the 35,000 units. If a party does not perform according to the contract terms, that party has committed a breach of the contract. Any unexcused breach of contract allows a non-breaching party to recover damages.

Sparton claims that NRTC breached a contract for the purchase of 35,000 LINK units in the following instances: by indicating that it would not purchase any of the 35,000 LINK units and thereafter failing to purchase any of the units, and by failing to reimburse Sparton for the costs of certain raw materials. NRTC denies this. Sparton has the burden of proving that a contract existed for the purchase of the 35,000 units, that NRTC breached the contract, and that Sparton was damaged as a proximate result of the breach of the contract. NRTC asserts that no contract was entered into requiring the purchase of the 35,000 units and, in any event, raw materials were not acquired under circumstances where their cost is recoverable. NRTC has the burden of proving these defenses.

***

If you award damages to Sparton for breach of contract by NRTC, then you need not consider the estoppel claims. If, however, you do not award damages to Sparton for breach of contract, then you must consider the estoppel claims. Sparton asserts, in addition to its

> claim of a contract for 35,000 additional LINK units, that it was induced by NRTC promises to acquire the excess raw materials that were available for production of 35,000 additional units. To prevail on this claim, Sparton must prove by a preponderance of the evidence that, first, NRTC made promises which it should have reasonably expected to induce action by Sparton to acquire additional raw materials or to withhold taking action to cancel orders for raw materials and, second, which did in fact induce Sparton to acquire such raw materials or to withhold taking action to cancel orders for raw materials. If you find a promise was made but that Sparton's reliance was unreasonable or unjustified, then you must answer "no" to Question C1.

The instructions explained to the jury the differences between a contract claim and an estoppel claim. Thus, it was not inconsistent for the jury to find there was a contract, that is was not breached, and therefore Sparton was not entitled to contract damages and to go on and consider whether principles of estoppel require the Sparton be compensated relating to a promise regarding excess raw materials.

C. THE RELIANCE ELEMENT

As stated above, on the claim of estoppel, for plaintiff to prevail the jury had to find that plaintiff

> . . .reasonably relied on facts which [defendant] misrepresented or concealed [etc]. . .

Defendant asserts that there was not sufficient evidence to support the jury's finding that plaintiff reasonably relied on anything defendant said or did in acquiring the excess raw materials.

While during and particularly at the end of trial, the Court expressed considerable skepticism that plaintiff established the requisites of a claim of estoppel, analysis of the documentary trail cited in plaintiff's brief has dispelled the Court's doubts.[8] A careful read of the trail consisting of e-mails and memoranda of conversations leads to the conclusion that the jury's verdict on estoppel should neither be overturned nor this claim retried. There is sufficient evidence to support the jury's finding. The trail follows:

PX 44 - 10/3/00 - handwritten notes of Steven Collier (defendant's point man) regarding conversation between the parties forecasting 4,200 a month requirement for 2001.

PX 12 - 10/13/00 - e-mail from Collier to Charles Stranko (plaintiff's point man) stating defendant's sales projection for 2001 - 3,600 LINKs

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[6] "Truth isn't in accounts but in account books," Josephine Tey, Daughter of Time, 96 (Penguin Books 1951).

a month for a total of 43,000 - may go as high as 6,500 a month.

PX43- 01/11/01 -Colllier's handwritten notes of a conversation - "MATERIAL LIABILITY > $2MM".

PX 16 - 02/01/01 - e-mail - Collier to Stranko - 64,000 LINKs projected for 2001

PX 19 - 02/28/01 - e-mail - Collier to Stranko - 5,000 per month production level

PX 20 - 03/05/01 - memorandum - Stranko to Collier - "considerable materials have been placed on order on verbal communications without written contractual commitments such as PO from Util-LINK. These orders must be canceled. Sparton has no option but to begin cancellation starting Monday, March 6. Naturally with any cancellations there will be significant risk to maintaining continuity."

PX 46 - 03/16/01 - Purchase order for 15,000 LINKs.[8]

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[7] No releases were issued by defendant under this purchase order.

PX 29 - 05/01/01 - e-mail Collier to Janna Mitchell (plaintiff's representative) -"NRTC has communicated to Util-LINK via its official sales projections that it intends to sell a total of 65,000 LINK 340-HL units in 2001 and therefore intends to purchase from Util-LINK intends 15,000 - 20,000 additional LINK 340-HL units through one or more additional purchase orders. Therefore, Util-LINK commits to order such additional LINK 340-HL units from Sparton through one or more additional purchase orders within the next 90 to 150 days."

PX 38 - 06/30/01 - purchase order for 35,000 LINKS [set forth above]

PX143- 08/20/01 - e-mail - Stranko to Collier - "it has also come to my attention that you have advised Technology Forecasters during an interview that Sparton will not be seeing any additional business over the 27,000 unit recall. I must say this public comment disturbs me on several levels."

In addition to the chronological account of the document trail, plaintiff in its brief describes in

considerable detail the evidence supporting its position that its practice was to hold and purchase raw materials in advance based on sales forecasts provided by defendant to assure that sufficient raw materials were on hand to meet the anticipated requirements of forthcoming purchase orders. The chronological account details sales forecasts by defendant beginning in late 2000 and the first six (6) months of 2002 which initially called for an additional 15,000 LINKS and then 35,000 LINKS over and above the 75,000 LINKS called for by the 1997 manufacturing agreement. This evidence supports the finding that it was in response to these forecasts that plaintiff continued to hold in inventory raw materials purchased for the manufacture of the initial 75,000 LINKs, and purchased additional raw materials in anticipation of receiving orders for LINKs beyond the 75,000, that defendant knew it and defendant did nothing to suggest to plaintiff it should not do so.

In sum, there is no good reason to reject the jury's finding that in the circumstances of defendant's actions between October, 2000 and the end of June, 2001, defendant should account to plaintiff for the cost of the raw materials it held in inventory to assure it would begin production of LINKs beyond the 75,000 as soon as purchase orders and releases were issued by defendant.

D. DECISION-MAKER ON ESTOPPEL CLAIM

Defendant says it was improperfor the Court to submit the estoppel claim to the jury; it was for the Court to decide, citing Aussenberg v. Kramer, 944 S.

W.2d 367, 370 (Tenn Ct. App. 1990). Plaintiff does not respond to this assertion. Defendant's position is not well taken. Aussenberg dealt with undisputed facts. Here, there were disputed facts as the Court clearly indicated when it reinstated the estoppel claims. In any event, Fed. R. Civ. P. 39(c) allows for an advisory jury on the Court's motion. Assuming defendant is right, the Court accepts the advice of the jury. There was sufficient evidence at trial for the jury to find for plaintiff on the estoppel issue.

E. THE DAMAGES AWARD

Defendant says that the damages award of $3,087,043.09 on the estoppel claim has no rational connection to the evidence at trial. Inexplicably, plaintiff did not directly respond to the assertion.

The $3,087,043.09 is made up of the dollar amount of raw materials plaintiff had in inventory which it says were either held or purchased in anticipation of purchase orders and releases for the 35,000 additional LINKs previously discussed, and what it characterized as related costs, *i.e.*, "initial inventory ordering and in-bound freight, the recurring capital/safeguarding costs of storage, and costs to manage inventories for the 4 years ended June 30, 2005, and interest for the 15 month period from July 1, 2001 through September 30, 2002." The amounts requested are as follows:

Excess inventory	$1,927,208.09
Related charges	$1,012,407.00
Interest	$ 147,428.00
	$3,087,043.09

Plaintiff invoiced defendant for the raw material inventory on May 21, 2002 for $2,210.481.16 as follows (DX 29):

Raw inventory total		$1,747,415.94
Cost of capital - raw material		
Inventory total	12%	$ 209,689.91
Material handling	8.5%	$ 148,530.35
Taxes and Insurance	3%	$ 52,422.48
Freight 3%		$ 52,422.48
		$2,210,481.10

There is no good explanation in the evidence why plaintiff continued to hold in inventory the raw materials and did not dispose of them once it knew that no further orders would be forthcoming from defendant. This plaintiff certainly knew by the end of August, 2001. As noted above, on August 20, 2001 Stranko e-mailed Collier in part as follows (PX 143):

> It has also come to my attention that you have advised Technology Forecasters during an interview that Sparton will not be seeing any additional business due to the 27,000 unit recall. I must say this public comment disturbs me on several levels.

The jury having found that plaintiff justifiably relied on defendant's representation that orders for 35,000 additional LINKs would be forthcoming, it was reasonable for plaintiff to hold in inventory raw materials sufficient to meet that production. Once, however, plaintiff knew that the orders would not be

forthcoming it was no longer reasonable for plaintiff to maintain the raw materials in inventory. As such, plaintiff at most is entitled to damages in the amount of $1,747,415.94. Unless plaintiff agrees to a remittitur to that amount within ten (10) days, defendant is entitled to a new trial.

The decision to require a remittitur rather than a new trial does not ignore defendant's argument that it is not possible on the evidence to separate out raw materials acquired in excess of those needed for the initial order for 75,000 LINKs and raw materials ordered specifically in anticipation of the 35,000 additional LINKs. What this argument ignores is the fact that the raw materials in excess of that needed to produce 75,000 LINKs were continued to be held in inventory to assure an adequate supply of raw materials to produce the 35,000 additional LINKs.

VI. BREACH OF THE 1997 MANUFACTURING AGREEMENT: DEFECTIVE LINKS

Defendant takes issue with the jury finding that plaintiff did not breach the 1997 manufacturing agreement by producing LINKs which were defective. Apparently, defendant does not contest the jury finding that plaintiff's breach did not extend to its failure to repair and replace LINKs which were defective.

Plaintiff argues to the contrary. It says that to find a breach the evidence must support a finding that the breach was material and not minor, and that the defects such as they were in certain of the LINKs

was not significant and in any event these defects were taken care of.

Defendant in reply says that materiality is not an element in deciding if there was a breach since the instructions did not state that the breach must be material. Any defect in a LINK must be considered a breach according to defendant.

The jury was instructed as follows:

> NRTC claims that Sparton breached its obligations under the 1997 manufacturing agreement by producing LINK units with manufacturing defects and by failing to promptly repair or replace these units at no cost. Sparton denies this claim.
>
> NRTC has the burden to prove by a preponderance of the evidence that Sparton breached its obligations under the 1997 manufacturing agreement, and that NRTC was damaged as a proximate result of the breach of the 1997 manufacturing agreement.
>
> You must determine whether Sparton breached the 1997 manufacturing agreement. If Sparton did not perform according to the contract terms, Sparton breached the contract. An unexcused breach of a contract allows the non-breaching party to recover damages.

Fairly read, the jury was told that to find a breach it had to find LINKs were produced with manufacturing defects and that the LINKs with manufacturing defects were not promptly repaired or replaced at no cost to defendant.

There is no need for any extended discussion on this issue. There was evidence that a small number of LINKs suffered from defects such as pinched "O" rings, mismatched case IDs and the like. These defects did not make the LINKs which suffered from defects inoperative, and in any event when defects in a LINK were called to plaintiff's attention it took immediate steps to either repair or replace the LINK. The vast majority of the problems from which LINKs suffered were a result of design failure, an element that was defendant's responsibility and not plaintiff's. The jury's finding of no breach was therefore reasonable in light of the evidence.

Also relevant to this issue is the fact that at no time prior to the filing of suit did defendant assert a breach of contract claim against plaintiff or suggest that plaintiff's production of defective LINKs was the proximate cause of defendant's loss of investment in its LINK venture. Rather, defendant asserted this claim after plaintiff filed suit.

VII. CONCLUSION

When all is said and done regarding the trial, the jury's verdict, and post-trial motions, it is fair to say that this is a case that never should have gone to trial. The fallout from the defeated expectations of

each of the parties should have been resolved by the application of common sense and negotiation.

Defendant entered into the LINK program with high expectations. These expectations were defeated for two main reasons. The first reason is that LINK technology was sophisticated and was not sufficiently advanced at the time LINKs went commercial to eliminate the bugs. For the most part it was design defects that thwarted market acceptance. Second, remote meter reading devices came on the market which were more efficient than the LINK, and these competitive devices displaced the market for LINKs. Defendant eventually abandoned the LINK program because it could use its capital to better effect. None of this was plaintiff's fault.

As to plaintiff, defendant's troubles were its troubles because plaintiff depended on orders from defendant to make its manufacturing program profitable. Plaintiff did not well manage its inventory of raw materials or it's program. As soon as it became aware that defendant did not intend to order additional LINKs, it should have disposed of its inventory of raw materials.

If plaintiff accepts the remittitur, **within 10 days,** there is no good reason to require the damages phase of this case to be retried. If plaintiff declines to accept the remittitur, **within 10 days,** defendant is entitled to a new trial.

Lastly, there is no good reason to give defendant a chance at a second jury on its liability claim against plaintiff.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: March 27, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, March 27, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager
(313) 234-5160

ENTERED November 9, 2005

AOA450 (Rev. 5/85) Judgment in a Civil Case

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF **MICHIGAN**

SPARTON TECHNOLOGY, INC.

Plaintiff,

V.

JUDGMENT IN A CIVIL CASE

Case Number: 02-73819

UTIL-LINK, L.L.C., et al.,

Defendant.

☒ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☐ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the plaintiff recover from the defendant the sum of three million five hundred eighty-one thousand six hundred eighty-seven dollars and thirty-two cents ($3,581,687.32) on its claims as reflected in the jury verdict. **IT IS FURTHER ORDERED AND ADJUDGED** that defendant recover from plaintiff nothing on its counterclaim as reflected in the jury verdict.

Approved as to form:

s/Avern Cohn
Avern Cohn
U.S. District Judge

CERTIFICATE OF SERVICE

Pursuant to Rule 77(d), F.R.Civ.P. copies of the foregoing judgment were served on November 9, 2005, by electronic means on Diane Y. Bower, Karen S. Kienbaum, Anthony J. Rusiciano and Eric J. Meier.

s/Diane Opalewski
(By) Deputy Clerk

November 9, 2005
Date

DAVID J. WEAVER
Clerk

s/Diane Opalewski
(By) Deputy Clerk

ENTERED November 7, 2005

VERDICT

SPARTON'S CLAIMS

A. The 1997 Agreement

1. Did NRTC breach the agreement by failing to pay for

(a) obsolete materials — Yes ___√___ [check only one] No _____

(b) testing equipment — Yes _____ [check only one] No ___√___

[If you answered "Yes" to Question A 1, please proceed to Question A 2; if you answered "No" to Question A 1, please proceed to Part B.]

2. What is the amount of loss suffered by Sparton for

(a) obsolete materials — $494,644.23

(b) testing equipment — $_____

B. The Additional 35,000 Units

1. Did Sparton and NRTC have a contract under which Util-LINK (NRTC) was obligated to purchase 35,000 additional LINKS?

Yes ___√___

[check only one]

No _____

[If you answered "Yes" to Question B I, please proceed to Question B 2; if you answered "No" to Question B 1, please proceed to Part C]

2. Did NRTC breach the agreement by failing to purchase the 35,000 LINKS?

Yes _____

[check only one]

No ___√___

[If you answered "Yes" to Question B 2, please proceed to Question B 3; if you answered "No" to Question B 2, please proceed to Part C]

3. What are Sparton's damages, if any, caused by the breach?

$_____

[Please proceed to Part C.]

C. The Estoppel Claims

1. Did Sparton justifiably rely upon a promise by NRTC which NRTC should have reasonably expected would induce action by Sparton with respect to excess raw materials?

Yes ____√____

[check only one]

No _____

[If you answered "Yes" to Question C 1, please proceed to Question C 3; if you answered "No" to Question C 1, please proceed to Question C 2]

2. Did Sparton change its position to its detriment which respect to excess raw materials in reasonable reliance upon statements of NRTC with respect to its future requirements?

Yes _____

[check only one]

No _____

[If you answered "Yes" to Question C 2, please proceed to Question C 3; if you answered "No" to Question C 2, you have completed your deliberations on Sparton's Claims.]

3. What is the amount of loss, if any, suffered by Sparton as a proximate result of such reliance?

$3,087,043.09

/s/
FOREPERSON

Dated: 11/07/05

VERDICT

THE NRTC CLAIM

A. Did Sparton breach the 1997 agreement by

1. producing LINKS which were defective?

Yes _____

[check only one]

No ___√___

2. failing to repair and replace defective LINKS?

Yes _____

[check only one]

No ___√___

[If you answered "Yes" to either Question A 1 or 2, please proceed to Part B; if you answered "No" to both Questions, you have completed your deliberations.]

B. Was NRTC damaged as a proximate result of Sparton's failure to:

1. produce LINKS which were not defective?

Yes _____

[check only one]

No _____

2. repair and replace LINKS which were defective?

Yes _____

[check only one]

No _____

[If you answered "Yes" to either Question B 1 or 2, please proceed to Part C below; if you answered "No" to both Questions, you have completed your deliberations.]

C. What is the amount of NRTC's damages, if any?

$_____

/s/
FOREPERSON

Dated: 11/07/05